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PETITION

OF

WILLIAM L. MACKENZIE, ACTING EXECUTOR TO THE ESTATE OF THE LATE ROBERT RANDALL, ESQ., OF LINCOLN COUNTY, M. P. P.,

Relative to the Sale of lot 40, in Nepean, on the Ottawa, (Bytown,) at the suit of Hon. H. J. Boulton, Solicitor General of Upper Canada; together with Reports of Committees of the House of Assembly of Upper Canada; copies of Bills passed for Randall's relief, and successively appointing Hon. Louis Joseph Papineau and others, as Umpire or Chancellor in the case; also the evidence on which such Reports and Bills were founded.

ORDERED BY THE LEGISLATIVE ASSEMBLY TO BE PRINTED,
October 27, 1852.

QUEBEC, 27*th October*, 1852.

To the Honorable the Legislative Assembly of Canada,

THE HUMBLE PETITION OF WILLIAM LYON MACKENZIE, ACTING EXECUTOR TO THE ESTATE OF THE LATE ROBERT RANDALL, OF CHIPPAWA, ESQUIRE, MEMBER FOR LINCOLN COUNTY, IN THE UPPER CANADA LEGISLATIVE ASSEMBLY,

SHEWETH:

That, in 1832, the House of Commons of Great Britain and Ireland unanimously addressed the Crown for a copy of an Address to His Majesty King William IV, from the House of Assembly of Upper Canada, dated in 1829, which they ordered to be printed and placed among their Sessional papers.

While describing the administration of justice in Canada, the Address tells the King, that "*In Michaelmas Term last, Mr. Justice Hagerman, alone, constituted our Court "of King's Bench, wherein he confirmed his own questioned judgment at the preceding Assizes, "in which Mr. Justice Sherwood was interested, the result of which trial involved a property "of very great value, acquired through those extraordinary judicial proceedings in the case of "Mr. Randall, whose injustice has long been unavailingly an object of legislative relief and "public sympathy. It is from such proceedings, such Courts, and such Judges that the people "desire to be relieved.*"

The history of Robert Randall's sufferings and misfortunes would fill a volume: he often expressed an opinion that much of the acknowledged injustice done him in the

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Tribunals of Canada, had arisen out of a prejudice against American Immigrants, a very large body of whom the Government party of his day publicly endeavoured to deprive, at once, both of their freeholds and their franchises. His extraordinary case has excited much attention on both sides of the lines, and very many persons, besides the Chief Magistrate of the American Union, are impressed with the belief that he was a victim of colonial oppression.* Four times in the matter of his Chaudière Estate, did different Legislative Assemblies vainly exert themselves to redress the manifest wrongs done to him and his devisees; the honest sympathies of the people long upheld him in public life, and enabled him to defeat the Upper Canada authorities when they sought to oppress his countrymen; but even the Governor General of Canada† entirely failed in his laudable efforts to protect him in the rightful possession of a very valuable landed property, which has been boldly wrested from him and his devisees, in open defiance of impartial justice and moral right.

"Civilization rests upon the security of property; neither the finest soil, nor the moral and intellectual constitution of any Country can prevent its relapse into barbarism, if the right to enjoy property is not secure." Were the Bench of Judges at Toronto, in the present day, to serve every Defendant in a civil suit with a demand of plea, and give him eight days to plead, in case he resided in that City, but if, (as was the case with R. Randall) he resided in Chippawa or in Glengarry, only four days were allowed him, with an order that the demand of plea be left in some office at Toronto, where Defendant would never hear of it, he not residing there—if the venue were laid in Toronto, although the Defendant lived at Cornwall, Plaintiff pretending to conform to the Statute, by swearing that he did not know where Defendant lived in Toronto, where he knew he never had lived—were this the usage, and were such frauds upon justice without a remedy, many innocent and just persons would be plundered and cruelly injured before knowing that they had been at law. It was far worse in Randall's time, when invaluable estates could be sold and alieniated after a sham lawsuit, without even the formality of a newspaper notice or printed handbill to tell of the Auction.‡

The distinguished persons who composed the Special Committee of the Upper Canada Legislative Assembly, in 1828, in one of the cases of grievance complained of by Randall, correctly remarked, that

"Irregularities may be waived after notice of them, by delay, or by taking a step "in the defence; but it would be productive of incalculable injustice if all notices could "be suppressed, a suit clandestinely carried through all its stages, at the sacrifice of "all law, and the ruined Defendant precluded from relief, while the Plaintiff sheltered "himself under his own wrong. If this can be law your Committee would recommend "a Legislative provision against it—for no Defendant should be deemed guilty of irreme-"dial neglect when the Plaintiff keeps him in the dark by his own wrong. Mr. Boulton "was conducting a cause for himself against his own Client, and when they consider "the nature of the debt, the great and multiplied irregularities by which the judgment "and execution were obtained, the great value of the property sacrificed, and the ex-"pensive and fruitless endeavours of the Petitioner to obtain a reversal of the proceed-"ings, they do not hesitate to recommend relief."

The devisees chiefly interested in the result of this application, are Randall's four grand children in Drummondville, Welland County; Frederick Smith, of Brantford; his children, Thaddeus, Maria, Edmund, William, Edwin, and George, and their children; W. Hewston, Halifax; the children of the late Colonel Thomas Hornor, Oxford County; children of late Dr. John J. Lefferty, Stamford; the heirs of late W. B. Wilson, Baltimore, Md., Antoine Belanger, and Maria Stark, Montreal; Randall's nephews and nieces in Maryland, Gerard Gover Wilson and Sisters.

* See documents—letter G.
† See documents—letter A.
‡ See House of Assembly's Report and Evidence of 1828; see also documents—letter I.

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The Wilsons retained the present Chief Magistrate of the United States to look after their interest, who, after such inquiries as he was enabled to make, wrote the Petitioner from Buffalo, 9th February, 1838, speaking for his law firm there,

"*From what we have been able to learn, we are led to think that Mr. Randall was great-*
"*ly injured by the Government party while living.*"

Your Petitioner understands that Hon. Levius P. Sherwood, then of Brockville, was warmly supported in February, 1821, for Speaker in Assembly, by Mr. Randall, then in ignorance of the part he had taken in the purchase of his Chaudière Estate, the manner of the seizure and sale of which has since excited so much feeling in Canada West. The notice, by the Petitioner, to prevent individuals from blindly involving themselves by purchasing from Sherwood and LeBreton, and to prepare all concerned previous to the meeting of the Legislature, in 1836, as published for a series of months in the Upper Canada Gazette, was in these words:

"*To all whom It may concern.*"

"Public notice is hereby given, that application will be made to the Legislature, at "its next ensuing Session, by petition from the Executor to the Estate of the late Robert "Randall, Esquire, for the enactment of a law establishing a special Tribunal for the re-"vision of certain proceedings in the Court of King's Bench, by which 950 acres of land "in the Township of Nepean, in the County of Carleton, consisting of Lots Nos. 38 and 40 "in the first Concession from the Ottawa River, and the broken fronts of said Lots, with "the broken Lots, Nos. 10 and 11, first Concession on the Rideau; also Lot No. 11 in "second Concession, and the front three-fourths of Lot No. 10, granted by the Crown "to the said Robert Randall, Esquire, in 1809, were adjudged to be sold, and were "sold, by the Sheriff, and conveyed to others; and until the issue of such application "shall be determined, all persons are warned against purchasing or leasing any part of "said property."

Your Petitioner was in error as to Lot 11, in the second Concession, which never was attempted to be sold or interfered with. The usual notices, in the Canada Gazette, and in the Bytown newspapers, have been duly given relative to the present application to Your Honorable House.

In 1798, Robert Randall, Esquire, then a young gentleman of respectable connections, large pecuniary resources, and good credit, emigrated from Maryland, his native State, to the District of Niagara, in Canada, with the intention of erecting and establishing extensive iron works, near the Falls of Niagara, and of carrying on the business of manufacturing wheat-flour there: although born a subject of King George III, he took the oath of allegiance before Mr. Commissioner Dickson, at Queenston, August 13th, 1802.

On the 2nd of November, 1798, he was introduced to Mr. President Russell, by letter from the Hon. Robert Hamilton, of Queenston, now on fyle in the Executive Department, who therein stated that Mr. Randall's object was a very important one to Canada, that the iron ore near the Falls was inexhaustible, and that "*Mr. Randall brings to* "*you a better introduction than any I can offer him. He claims my attentions from very res-*"*pectable recommendations he brings from my friends in New York.*"

Mr. Randall then stated his plans and projects to the President, who gave him every possible encouragement. A minute of the Executive Council, dated January 14th, 1799, thus concludes; "*He (Mr. R.) must distinctly understand that it is expected* "*that he will put all confidence in the Royal promise as pledged by the President and Council;* "*and that he must not expect to have a grant or lease of the spot in question* (the front of the "River Niagara, from above Bridgewater Mills to the Chippawa River) *until he has com-*"*pletely complied with all his engagements.*"

Mr. Randall erected his forge and manufactured cast and bar iron on the banks of the Niagara; his mills were burnt and his forge destroyed by the enemy during the War of 1812; the pledge of the Government to lease him the valuable property he had

asked was never fulfilled; his repeated requests, even to be furnished with a copy of it, were steadily refused. It is presumed that he was the first manufacturer of wrought iron in the Canadas.*

Toward the close of the last century, Mr. Randall purchased one-half of the Bridgewater Works, and the grist and saw-mills at Niagara Falls, from Messrs McGill and Canby, and the other half from Mr. Elijah Phelps; took possession; carried on a large mercantile and milling business in the early part of the present century; and gave such extensive country credits as induced him, after the failure of his British and Quebec correspondents, Messrs. Burton and McCulloch, to surrender possession of the Bridgewater property for a time to meet certain Lower Canada claims.† His tenant in possession, the late J. Durand, Esquire, made over the property informally to Messrs. Clark and Street, and Colonel Clark went to England after the War of 1812, and had a very imperfect title changed into a land-patent from or by authority of the Prince Regent, Mr. R. being then in the Montreal Prison. This deed was obtained upon exparte statements.

Besides his establishment at Niagara Falls, Mr. Randall had a large mercantile concern at Cornwall, where he built the Episcopal Church. In 1807, he explored the Ottawa and Rideau Rivers, accompanied by Indians; readily perceived the value of the Chaudière Falls property at the Richmond Landing; and employed Mr. H. J. Boulton and his father, to get a patent from Governor Sir F. Gore, of 1,000 acres in Nepean, of which Lot No. 240, on the Ottawa, (some 276 acres) is now in the heart of Bytown, and Lot No. 238 close by it. Six hundred acres, rich with iron ore, in Hull, adjoining Bytown, also belong to his estate; he was the first settler in Bytown—had a store there, in the wilderness, as early as 1809—and was preparing to go into the business of manufacturing iron on the Ottawa, when he was arrested for a debt at the suit of the late Col. Thomas Clark, who visited him often in Gaol, at Montreal to induce him, for a consideration, to quit his claim to the Bridgewater Estate at Niagara Falls, but in vain.

After nearly seven years of close confinement there, and when the patent to Clark for Niagara Falls property was completed, Randall's prison doors were opened, and he immediately went to Niagara, employed the elder Mr. Boulton, then Attorney-General, to commence an action for part of his damages, and got £10,000 of a verdict, which was set aside by the King's Bench Court, in banc; in another suit, damages were also given him, and the case was left to an arbitration, at which nothing was done.

When the senior Mr. Boulton was placed on the King's Bench, he advised Randall to fee his son, Henry John, which he did: the father then handed over all the papers in Randall's matters to his son, and took the Niagara Circuit where Randall's case was by far the most important, though he had determined not to try it, but to throw it another year back; the son asked Randall for his note for £25, for crossing from Toronto to Niagara, under these circumstances; got it; and then the father refused to hear the cause. Mr. H. J. Boulton also got of Randall a mortgage on Lot 11, in Nepean, for a balance of charges alleged to be due to his father, the Judge, on the unfinished lawsuit, and on account of the son's labors as Attorney in the same cause.‡

Randall had struggled for justice against the wealthiest men in Canada West, till he was penniless; Boulton knew this, and assured him he would never desert him. There was no Court of Equity during Randall's lifetime into which he could bring Colonel Clark's title to Niagara Falls estate; and in April 1819, Boulton turned round upon him, claiming about £50 for his father's services; £47 for attending at an arbitration not gone into; about £16 of interest, and the above note for £25; in all about £142. Boulton sent him (Randall) a summons for these law costs, and then

* In his petition to Sir F. Gore, 1809, now on fyle in the Executive Council Office, Mr. Randall states that the first wheaten flour manufactured in Upper Canada for the European market, was ground at his Bridgewater Mills. See documents—letter K.

† Na. Burton and J. M. McCulloch, merchants, Lower Canada, in 1800, 1801 and 1802.

‡ See documents,—letter C.

sent his Clerks, Smith and Jarvis, with a cognovit for him to sign, (in addition to the mortgage), and wrote him, May 1st 1819, "Your cause with (Elijah) Phelps will be tried at the Assizes probably in Sept." R. Randall signed no cognovit, and as no demand of plea to the declaration was ever made by Boulton, Randall knew there could be no lawsuit against him. But there was a pretended lawsuit, and that too without notice to the party whose invaluable property was destined to be cruelly sacrificed by his own attorney.

In the autumn of 1819, one of Randall's great Bridgewater suits came on, at St. Catharines, and for the fourth time; but Boulton was not there: he was then secretly prosecuting his own client for law costs, though Randall had implored him not to desert him in his hour of need.

The present Chief Justice (Robinson), and the senior Barrister and senior member of the law Society of Upper Canada (Beardsley), were retained by the affluent defendant; and poor Randall, who never had spoken in public, and couldn't, and who knew nothing of law pleading, stood alone without Counsel, opposed by the great skill and eloquence of the ablest lawyers of that day, his own hired Advocate having been added to his opponents, in the hour of difficulty. His cause, often gained before, was lost. Mr. Solicitor General Boulton's two letters to Randall, previous to the above trial, were given in evidence before the Committee of Assembly, in 1828, and are as follow:

"To Robert Randall, Chippawa."

"York, 8*th July*, 1819.

"From what has occurred I suppose you do not wish me to advocate your two "causes at the next Assizes; if that is the case, I should wish to know it immediately, "as it will save me some trouble. Indeed I am not very anxious to be the advocate of "a person who is so very illiberal in his sentiments, because I should expect (from the "specimen in your former letter) that, should all my efforts prove of no avail, you would "accuse me of not sufficiently exerting myself, and allowing the other side, from im-"proper motives, to obtain undue advantages.

"At all events, in order that I may not subject myself in future to the like treat-"ment and similar observations, I shall expect the fee with my brief to be advanced, "which will preclude all misunderstandings.

"If possible to be procured, you should have the original note upon which the "judgment in Mr. Clark's suit was obtained. You had better write to some of your "friends, in Montreal, to apply to the Officer of the Court for it who, perhaps, will give "it up.

"Your obedient servant,

(Signed,) "H. J. BOULTON."

"To Robert Randall, Chippawa."

"York, 24*th May*, 1819.

"Sir,—I received your most extraordinary letter of the 17th instant, by Mr. "Smith, which, if there is any meaning at all to be given it, is a very impertinent one, "and such an one as I will not permit you nor any other client to write to me with "impunity. I would have you to understand, that I am not rendering you any pro-"fessional assistance, from what you may fancy popular reasons: and therefore, any "further than my duty to my client prompts me I do not care a farthing about you. "You gave me what I expected at the time to be a security for £100, half for "my own benefit and half for my father's. This security, I find not worth half a "dollar per acre, as there are no inhabitants in the Township. In addition to which

"I have your note for £25, due on the first of this month, both which sums, with "interest, amount to nearly £140. And the security I have, independent of your per- "sonal responsibility, is not sufficient to guarantee the payment of half that sum; and "as I am not looking at the result of your business, as you call it, for my payment, "I insist upon having the money long due to me for services already performed, paid "or secured in a sufficient manner. Were you unable to do either, I should not perhaps "expect or wish it, but in proportion as you oppose giving me what I have a right to, "so in proportion shall I insist on it, as you can have no honourable or just reason for "withholding it. If you will pay me down £50, so as to lesson the burthen upon the "land, I will accept it, and let the remainder stand as it does. I return the cognovit "for your signature, and patiently wait the return of the post. Mr. Jarvis I fancy "will hand you this, who will give you a receipt for any money you may pay him. "You may be certain I shall not retract one farthing.

"Your obedient servant,

(Signed,) "H. J. BOULTON."

Four thousand pounds were awarded to the proprietors of the Bridgewater Mills, by the Government Commissioners, who would not undertake to say whether Randall or Clark and Street were entitled to the money. After much delay the money was ordered to be paid over to the latter, on giving security in the event of a legal decision to the contrary to refund to Randall.

With the freeholders of the district of Niagara, Randall had ever been a favourite, for he had been their early benefactor. In 1820, they sent him to the Legislature, where his votes displeased Mr. [now Chief Justice] Robinson, and in 1821 his invaluable clergy reserve, No. 39, Nepean, now part of Bytown, was taken from him, Messrs. Heward and Robinson alleging or reporting that he owed £11 of rent: there were others owing more than £11 of rent, who were not thus treated; and that reserve is now worth ten thousand pounds.*

To his utter astonishment, Randall was also accidentally informed, while sitting in Assembly, in the winter of 1821, by the Hon. Wm. Morris, then also a Member of Assembly, that his (Randall's) most valuable unencumbered estate, Lot 40, now in Bytown, between 200 and 300 acres, then called the Richmond Landing, had been sold under an execution at the suit of his lawyer, H. J. Boulton, with whom he had had no lawsuit whatever, so far as he knew. Mr. Stuart, the Sheriff who sold; Mr. L. P. Sherwood, the Judge who bought (with Captain LeBreton†); and Mr. H. J. Boulton, at whose suit this iniquitous sale was made, were all of them brothers-in-law. The Sheriff passed by the mortgaged lot.‡ There was no Gazette or other newspaper notice or printed handbill. Hon. Wm. Morris, who desired to have the case tried over again, by the Court of King's Bench, and voted that it should be tried again by a special equity jurisdiction, and Mr. Papineau to be the Chancellor, gave evidence before a Special Committee of the Upper Canada Legislature, in 1828, that in his opinion, even the Messrs. Wright, of Hull, immediately opposite Bytown, knew nothing of the sale; and also that the people within five miles from Point Nepean, were entirely ignorant of it; and that had the 276 acres been his, he would not have allowed any one to select one acre for £500 or less.

Randall, when he went into Parliament, swore, and fyled his oath, that he was the true owner of the Niagara Falls Estate, of 1200 acres, in Wainfleet, near to it, and of lot 40 in Bytown, which had thus been sold; and that he had a qualification to be a Member, out of these lands, and, for so doing, the Executive Council ordered him to be tried for perjury.

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* See documents,—letter J.

† John LeBreton, formerly Captain in the 60th Rifle Brigade, and Deputy Assistant Quarter-Master-General, during the late war with the United States, died at Toronto, February 24, 1848, aged 71 years.—Hon. L. P. Sherwood died more recently, in Toronto, at an advanced age.

‡ See documents,—letter C.

Boulton, as a party concerned, and Robinson, as Counsel for Clark and Street, kept back. Hon. Chief Justice Macaulay prosecuted for the Crown; Sir William Campbell presided, at Niagara; and ably, and without fee or reward, did Messrs. John Rolph, and Doctor and Robert Baldwin,* defend the immigrant victim of Colonial oppression. Randall summoned Col. Clark,† who testified that he had visited Randall in his dungeon, in Montreal, from time to time, to try to get him to make over to him his claim upon the Falls estate, now possessed by Mr. Street. The instant verdict of acquittal was received with acclamation, as a triumph of justice by the people, and from that hour till his death, in 1834, Randall was the favourite representative of Welland, Lincoln and Haldimand. He was the people's agent, at London, where he defeated the alien bill. He was a Government Commissioner and Director of the Welland Canal, and he died in the hope that the day would come when even-handed justice would be dispensed in Canada. The oath he took was in these words.

"I, Robert Randall, of the Township of Stamford, do swear, that I, truly and *bona* "*fide*, have such a freehold estate, situated in the following places; the place known "by the Bridgewater Works, in the waters of the Niagara River, between the mouth of the "River Welland and the great falls in the Township of Stamford, district of Niagara; "four frame dwelling houses, under two stories, with not more than two fire places; "twelve hundred acres of land, being the north part of the lots Nos. 15, 16, 17, 18, 19, "and 20, on the South side of the river Welland, in the township of Wainfleet, district "of Niagara; compensation allowance for the destruction of the Bridgewater Works, "in the late war with the United States of America, detained in the hands of this Govern- "ment by my order, four thousand pounds; seven hundred and twenty six acres of land, "Lots Nos. 38, 39 and 40, in the first Concession from the Grand or Ottawa river, and "the broken fronts of said Lots, in the Township of Nepean, County of Carleton, dis- "trict of Bathurst; four hundred and fifty acres of land, broken Lots, Nos. 10 and 11 "in the First Concession; lot No. 11., and the easternmost or front three-fourths of Lot "No. 10, in the second Concession, upon the river Rideau, Township of Nepean, County "of Carleton, district of Bathurst; 400 acres of land, Lots No. 11 and 12, in the eighth "Concession of the Township of Matilda, in the County of Dundas, Eastern district; "four hundred acres of land, Lots No. 10 and 11 in the sixth Concession of the Township "of Yonge, County of Leeds, district of Johnstown, over and above all incumbrances that "may affect the same, and am otherwise qualified, according to the provisions of the "law, to be elected and returned Member, in the Commons' House of Assembly, accord- "ing to the tenor and true meaning of the Act of Parliament in that behalf; and that "I have not obtained the same fraudulently, for the purpose of enabling me to be "returned Member to the Commons' House of Assembly: So help me God.

(Signed,) "ROBERT RANDALL."

"Sworn before me, at Stamford, in the County of Lincoln, in the district of Niagara, this 26th day of July, 1824."

"RICHARD LEONARD, Returning Officer,"
"District of Niagara."

The Special Committee appointed by the Legislative Assembly of Upper Canada, in 1828, to enquire into Mr. Randall's complaints, was composed of B. C. Beardsley, Esq., senior Member of the Law Society, Hon. John Rolph, now Crown Lands Commissioner, Hon. John B. Robinson, Chief Justice, Hon. M. S. Bidwell, Barrister, and Capt. John Matthews, Royal Artillery. Their Report, taken from the journals of that year, was as follows:

* See documents,—letter H.
† See documents—letter E.

"The Committee to whom was referred the Petition of Robert Randall, Esquire, "with power to send for persons and papers, and report thereon, have enquired into the "same, and respectfully submit the following Report:

"It is admitted that the demand of Mr. Boulton against Mr. Randall was for professional services, rendered by himself and the Honorable D'Arcy Boulton, late a "Judge of the King's Bench. The principal charges are £50 for business alleged to "be done by the Honorable D'Arcy Boulton, before his elevation to the Bench, and £50 "to Henry J. Boulton, being principally a charge of five guineas a day, for eight days "in attending an arbitration at Niagara, in the Niagara District, for the Petitioner, in a "suit, Robert Randall *vs.* Elijah Phelps, in the Court of King's Bench, in which five "guineas had been previously paid as a retaining fee, and not included in the account "for which the bond was given. In security for the payment of the said sum of one "hundred pounds, the Petitioner gave a mortgage to Mr. Boulton of Lot No. 11, in the "first Concession on the Rideau, in the Township of Nepean and which mortgage is "recited in the condition of the bond upon which the action was brought. The cause "R. Randall *vs.* Elijah Phelps, came on for trial at the Niagara Assizes, in the year 1818, "where Mr. Justice Boulton presided, and Mr. Henry J. Boulton, attended, as Counsel "for the Petitioner, the Plaintiff in the cause. On the day upon which the trial was "to take place, and a short time before it was called on, the Petitioner, at the request "of Mr. Boulton, gave him his note for twenty-five pounds, payable the first of May "following, as a Counsel fee for the expected trial. The Petitioner proceeded to collect "his witnesses, and Mr. Boulton called on the cause, when the Judge refused to try it "on the ground of his having formerly acted as Attorney in it for the Plaintiff. The "case was therefore not tried. Upon this note, as well as upon the bond, Mr. Boulton "recovered the judgment, against which the Petitioner complains.

"At the subsequent trial, Mr. Boulton did not attend, and it appears that taking "offence at the want of confidence which he inferred from a letter writ en to him by "the Petitioner, he did not feel himself bound, without a further request, and a further "fee, to continue his professional aid in the suit. This will be seen from the copies of "Mr. Boulton's letters annexed, one dated 24th May, 1819, and the other 8th July, "1819. The Petitioner complains, in the first place, that Mr. Boulton, at the time he "took the note for twenty-five pounds, knew the cause would not be tried. This "is denied before Your Committee by Mr. Boulton. The Attorney General,* "states in his evidence that he expected the refusal of the Judge to try the "cause, though unapprised of it. He also states that he has an indistinct recollection "that the Judge, about the time of arranging the Circuits, expressed his reluctance to "try the cause. The House can judge how far it would have been judicially correct "for Mr. Justice Boulton to try the cause, in which he had been Attorney and Counsel; "and therefore how far there was a reasonable presumption for Mr. Boulton, that the "cause would not be tried, under such circumstances; and how far the note for twenty-"five pounds should have been retained after the immediate failure of the considera-"tion for which it was given.

"Mr. Boulton prosecuted Mr. Randall for the recovery of the one hundred and "twenty-five pounds, upon the bond and note, and the following is an abstract of the "proceedings in the suit:—

"IN THE KING'S BENCH.

"*Henry John Boulton, Plaintiff,*
vs.
"*Robert Randall, Defendant.*

"This action was commenced by a writ of summons in a plea of debt, issued from "the Crown Office, at York, in the Home District, on the thirty-first day of May, 1819,

* Now Mr. Chief Justice Robinson.

" returnable the first day of Trinity Term, 1819, being the fifth day of July of that " year. This summons, with the declaration annexed, was fyled in the said Crown " Office on the thirteenth day of July, 1819, with an affidavit made by Samuel P. " Jarvis, before Thomas Dickson, on the 24th day of June, 1819, stating that the same " was served on the Defendant by the Deponent, on the twenty-second of June, of the " same year. On the said 13th day of July, 1819, an appearance for said Defendant " in said cause, was entered in the said office by said Plaintiff, and on the same day an " affidavit made on the 13th day of July, 1819, before John Small, Clerk of the Crown, " by the present Honorable James B. Macaulay,* then a student at law with the said " Henry John Boulton, stating that the place of residence of the Defendant in the " Home District was unknown to the Deponent, and also a demand of plea, were fyled in " the Crown Office. On the 13th day of July, 1819, interlocutory judgment was signed, " and final judgment entered for two hundred and twenty-five pounds debt, and five " pounds three shillings and eight pence, damages and costs, amounting altogether to " the sum of two hundred and thirty pounds. On the 5th of October, 1819, a writ of " *fieri facias*, against the goods and chattels of the Defendant, was issued upon a *præ-* " *cipe* fyled by the Plaintiff, directed to the Sheriff of the Home District, returnable on " the first day of Michaelmas Term following, being the first day of November, 1819. " This execution, with a return of *nulla bona*, by the Sheriff of the Home District, was " fyled in the said Crown Office on the return day, and on the same day a writ of *fieri* " *facias* against the Defendant's lands and tenements was issued, (upon a *præcipe* fyled " by the Plaintiff,) directed to the Sheriff of the Johnstown District, and returnable the " last day of Michaelmas Term, 1820, which writ was fyled in the said office on the " seventeenth day of March, 1825, with the following return by the Sheriff of the Johns- " town District :—

" ' By virtue of this writ to me directed, I have caused to be made by the public " ' sale of the lands and tenements of the within named Defendant, Robert Randall, (that " ' is to say,) Lot No. Forty in the first Concession of Nepean, in the Johnstown District, " ' together with its broken front, in front thereof, on the Ottawa or Grand River, the " ' debt and damages within mentioned, which I have ready before the Lord the King, " ' to be rendered to the said Henry John Boulton, for his debt and damages aforesaid, " ' as within I am commanded.

(Signed,) " ' JOHN STUART,
" ' Sheriff of District of Johnstown.' "

" That on the 7th day of November, 1821, a motion was made to the Court, to set " aside the judgment and execution upon an affidavit of the Defendant, upon which a " rule was granted to show cause; and upon cause shewn, the rule was discharged by " the Court.

" And that on the twenty-third day of January, 1824, a similar application was " made to the Court, upon an affidavit of the Defendant; and upon cause shewn " and an affidavit fyled by Plaintiff, on the 30th April, 1824, the rule was discharged.†

" On the twenty-fourth day of June, 1824, a writ of error *coram nobis*, under the " great Seal of the Province, was granted; error was assigned by the Defendant in this " case on the 13th day of December, 1824, and the Plaintiff in this case pleaded thereto " on the 25th day of January, 1825.‡

" The foregoing is a correct schedule of the proceedings in this cause, no other " proceedings in the case have been filed or entered in the Crown Office. There does " not appear to have been any assessment of damages by the Court, or a Jury, or

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* Now Chief Justice of the common pleas, U. C.
† See documents,—letter C.
‡ See documents,—letter D.

" any order of the Court or fiat of a Judge thereof, for judgment or for any execution. " In obtaining this judgment, Your Committee notice the following violations of the " then existing law. By the tenth Section of the Act of the 34th of Geo. 3rd, regu- " lating the practice of the Court of King's Bench, and under which Act the process " in the said cause was issued, it is expressly enacted, ' *That in all actions or suits where* " ' *the Defendant or Defendants reside without the limits of the Home District, or* " ' *District where the Court shall be holden, eight days shall be allowed after such* " ' *demand of plea, as the ordinary time within which they shall be required to fyle* " ' *their plea,* &c.' but notwithstanding the said Act, the said Henry John Boulton, who " perfectly knew the residence of the Petitioner to be within the District of Niagara, " and not in the Home District, proceeded to sign not only interlocutory but final " judgment *within four days* after demand of plea, and that put up or fyled in a " District where he well knew the Petitioner did not reside.

" This prejudicial violation of the rules prescribed by the Statutes of the Province, " made for the protection of Defendants, is attempted to be justified by a prevailing " practice under the following rule of Court:

" *Scott, C. J.* " *Powell, J.* " *Campbell, J.* " Michælmas, " 54th Geo. III. } " It is ordered, that from and after the first day of Hilary Term next, in all cases where the Defendant has not appeared in person or by his Attorney, judgment by default shall not be signed, without an affidavit being first made and filed of a demand of plea having been served upon the Defendant, or by being left at " his usual place of abode, if the same be in the District where the action is brought, and " if the Defendant's place of abode be not in such District, that then the demand of plea " shall be entered in the office, accompanied with an affidavit, stating that the Defend- " ant's place of abode within such District, is not known to the Deponent, and that " judgment by default in such cases, shall not be signed till four days after such service " or entry respectively."

" This rule if so construed, as to warrant the practice contended for, carries injus- " tice upon the face of it; if a Defendant lives in the Town of York,* within the " precincts of the Home District, the demand of plea must be served upon him, or " left at his usual place of abode; but if he lives in remoter settlements in the very " Eastern and Western extremities of the Province, the eight days given by the Statute " are arbitrarily reduced to four, and the notice, instead of being left at his abode, is " fyled in an office to which from his remoteness, he cannot have access, and of the pro- " ceedings in which, from the inevitable difficulties of communication, he cannot be " reasonably apprized.

" The affidavit required by this rule of Court to consummate its object, is also of a " most extraordinary nature. ' *If the Defendant's place of abode* BE NOT IN SUCH DISTRICT, " ' *then the demand of plea shall be entered in the office, accompanied with an affidavit stating* " ' *that the Defendant's place of abode,* WITHIN SUCH DISTRICT, *is not known to the Depo* " ' *nent.*' "

" In the cause now the subject of complaint, the summons was served upon the " Petitioner in the Niagara District, where he had resided for a number of years, and " Mr. Boulton admits that the place of his† abode was known to him, and to the Clerk, " under whose oath he was enabled to sign his judgment. It is implied that the Depo- " nent believes the place of abode to be in the Home District, but not known to him."

" It would require strong language to give a suitable reprobation of a rule of Court " which is equally subversive of the rules of good conscience and statutory law.

" The Committee desire to remark, that from the evidence, it appears that Mr. " Boulton acted upon the rule in many other cases in which he had no personal inter- " est, and the profession generally did the same.

* Now Toronto.
† Robert Randall's.

"The judgment appears to have been in several other respects obtained contrary "to the practice required by the Court, which practice had it been followed or enforced, "would have afforded some protection against undue advantages and surprise. The "following rules was not observed:—

"*Elmsley, C. J.*, "*Powell, J.*, "*Alcock, J.*, "Michaelmas, "48th Geo. III. } "RULE 8. It is ordered that in future the note or bond is to be produced for the inspection of the Judges when a motion is made to refer them to the master."

"The Court require the note and bond to be produced for the inspection of the "Judges, a rule which it is presumed was intended to prevent fraud and maintain "unsullied the character of public justice. And when Your Committee consider the "irregularities disclosed in these proceedings, and an attempt to justify them by their "frequency, they cannot but feel that the rule was as necessary as it was well intended.

"The following rule of Court was also obviously intended to prevent undue advan- "tages and surprise, by the violation of which rule Mr. Boulton had an execution "against the Petitioner's lands and tenements before he could by a legal and regular "course have obtained a rule absolute to sanction his proceedings.

"*Hilary*, 47 Geo. III. } *Scott, C. J.* *Thorp, J.* } "RULE 21. It is ordered that in future in all cases by judgment by default on bonds conditioned for the "payment of money, a rule *nisi* to refer the bond to the master for taxation shall "not be necessary; but in lieu thereof a notice of motion for the peremptory rule "shall be given in writing to the Defendant or his Attorney, at least thirty-one days "before Hilary and Easter Terms, and twenty-one days before Trinity and Michaelmas "Terms, respectively, which rule shall accordingly be made absolute in the first ins- "tance, on an affidavit having been made of the service of such notice."

"The execution was also obtained with the same irregularity, and in defiance of "the known rules of Court, as appears from the following rule.

"*Easter*, 40 Geo. III. } *Elmsley, C. J.* *Powell, J.* *Alcock, J.* } "RULE 10. It is ordered that from and after the end of this Term, the Clerk give no writ of exe- cution on a judgment by default, on any bond, "without an order of Court, in Term time, or the fiat of a Judge in vacation."

"Mr. Boulton, however, dispensed with any order of Court in Term time, or "fiat of Judge in vacation.

"The bond upon which the action was in part founded, was a mortgage bond, a "copy of which is annexed. It appears on the face to be collateral security, and how "far, therefore, Mr. Boulton was bound to suggest breaches according to the Statute, "Your Committee have not enquired.

"It appears that several applications have been made to the Court of King's Bench "for relief, without avail. The refusal of the Court to interfere, was not on the ground "that the application had no merits, but on the principle that the objection came too "late. Your Committee, however, think it right to observe, that from the course pur- "sued by Mr. Boulton, the Petitioner was deprived of those notices to which he was "entitled by the written law of the land, and the rules of the Court.

"Irregularities may be waived after notice of them by delay, or by taking a step "in the defence; but it would be productive of incalculable injustice if all notices could "be suppressed, and a suit be clandestinely carried through all its stages at the sacrifice "of all law: and the ruined Defendant should be precluded from relief, while the "Plaintiff sheltered himself under his own wrong. If this can be law, Your Committee "would recommend a Legislative provision against it, for no Defendant should be "deemed guilty of irremedial neglect when the Plaintiff keeps him in the dark by his "own wrong.

" Mr. Boulton has received his principal and interest upon the bond and note. The " fee of the land mortgaged is also in him, and there is no Court of Chancery to interfere. " The land sold at Sheriff's sale under this judgment is, undoubtedly, most valuable, and " it appears to have been sold before the Petitioner knew there was a judgment against " him. Part of the land sold under the judgment is owned by the present Hon. Mr. " Justice Sherwood, brother-in-law to Mr. Boulton. There is, however, no evidence to " shew that Mr. Boulton was concerned in the sale or the purchases.

" Your Committee have to remark that Mr. Boulton was conducting a cause for " himself against his own client; and when they consider the nature of the debt, the " great and multiplied irregularities by which the judgment and execution were " obtained, the great value of the property sacrificed, and the expensive and fruitless " endeavors of the Petitioner to obtain a reversal of the proceedings, they do not hesi- " tate to recommend relief. Independent of the interest of one of the Judges, it appears " that the Court of King's Bench, if they set the proceedings aside, could not afford " adequate relief, and therefore Your Committee have reported a Bill enabling the " Honorable Mr. Justice Willis to enquire into the matters alleged in the petition, and " to do justice between all the persons interested. The Chief Justice* is not in- " cluded in the Bill, as it is publicly reported that he is about to visit England; " and, under such circumstances, the object of the measure might be defeated, and the " ends of public justice not be answered, if he were included. Mr. Boulton complains " of Mr. Randall for having misrepresented the value and quantity of the land mort- " gaged to him; and the Committee have annexed the evidence and documents adduced " in support of the charge.

" All which is respectfully submitted.

(Signed,) " B. C. BEARDSLEY,
Chairman."

FOR EVIDENCE SEE APPENDIX (A.)

The Estate, in Bytown, which Capt. LeBreton endeavoured to obtain by purchase from Randall, and which he, and the late Judge Sherwood, obtained possession of through the secret movement of Boulton, when he turned upon his client, was described in an advertisement in the newspapers of Canada, in September, 1828, when, through the suspension of Mr. Justice Willis, the Executive Council, of that period, had been enabled to place Mr. Hagerman on the King's Bench as a temporary Judge, at Perth, and as the whole Court of King's Bench, in Randall's case, at Toronto. That it was of very great value, and ought not to have been sacrificed under a pretended law-suit and sale, to satisfy such a claim as Boulton's for £142. Capt. LeBreton's advertisement is good evidence: it was in these words:

" Town of SHERWOOD."

" In consequence of the decision of the Court held at Perth, on the 20th instant, " proving the subscriber's indisputable title to that valuable tract of land in the Town- " ship of Nepean, formerly known by the name of the Richmond Landing (at pre- " sent the Town of Sherwood,) and adjoining Bytown, reports prejudicial to the " title of said land having been maliciously circulated by a personage of high rank and " responsibility [meaning Lord Dalhousie,] have heretofore prevented the sub- " scriber from disposing of said land. The situation is most beautiful and salubrious, " being on the south side of the Chaudière Falls, with the Grand Union Bridge " abutting on the centre of the front, and leading through the main street. ***It is re-*** " ***plete with mill sites, and for commerce no situation on the River Ottawa can equal***

"*it.* The Subscriber is determined as much as possible, to confine his sales to per-
"sons of respectability.

(Signed,) JOHN LEBRETON.

"Baltimore, Ottawa River, *26th August*, 1828."

The moment that Randall ascertained that Boulton had thus secretly sold his estate, he employed Alexander Stewart, Esquire, Barrister, then of Niagara, now of Brantford, to obtain a reversal of the proceedings upon proper affidavits. Mr. Stewart's letter to W. L. Mackenzie, dated Brantford, 2nd August, 1852, *thus details* the proceedings, so far as he (Mr. Stewart) was concerned in the suit.

"I shall now endeavour to give you all the information that I can upon the "motion which I made to set aside interlocutory judgment in the case of Boulton, "*vs.* Randall: I think it was in Trinity Term, 1822, [it was November 7th, 1821,] "the Statute at that time regulating the proceeding in the King's Bench, which "was by summons and declaration, both being in one. The Statute required that "the Defendant should be personally served with a copy, *and afterwards with a de-*"*mand of plea.* The service of the demand of plea was not required to be personal, "but leaving the same at the Defendant's place of abode would be sufficient. Major "Randall was then living at Chippawa, and the Plaintiff had laid his venue in the "Home District (Toronto.) The Court of King's Bench had made a rule that where "the Defendant resided in a different district than where the venue was laid, the "Plaintiff might stick the demand of plea up in the Crown Office (at Toronto) with "an affidavit that the Defendant's place of residence in the Home District was un-"known to the Deponent. I made objection to the Court having any such power to "make any rule of the kind. I contended that it was contravening the Statute; that "by a common sense view of the same, it was clear that it was intended that the "demand of plea should be at least left at the Defendant's place of abode. I con-"tended also, that the Statute giving the Court power to make rules, was only to "regulate the practice where the Statute had omitted to do so, but here was no such "omission, the Act required the Defendant to be served eight days before interlocu-"tory judgment could be signed; but it was all in vain, the Court ruled themselves "the power; I took nothing by my motion. Boulton brought debt on his mort-"gage, and included a £25 note which he extorted out of the poor Major, and "as an interlocutory judgment in debt is a final judgment, he immediately issued "execution, and a more * * * * * * proceeding never disgraced the administration of "justice in any Country. You only do me justice when you say I was a friend of "the Major; he was the intimate friend of my father, and I shall be happy at all times "to give you any information that I can, and I feel satisfied that if ever the decision of "that day could be brought before the Court of Appeals, that the whole would be upset."*

Mr. Randall next appealed to the Hon. John Rolph, and told him he had no means to carry his case farther. Dr. Rolph assisted him; brought the wrong he had suffered under the notice of the Court of King's Bench, but could get no redress for his client.†

Lot No. 40, worth to-day £40,000, and soon to be worth £100,000, sold for £449. Boulton got his fees, and the other £300 lay with the Sheriff, and his heirs; Randall would have begged his bread rather than touch a penny of it. The property was wantonly sacrificed. Randall had refused an offer of several thousand pounds for the lot years before.

The Committee also reported the following Bill, appointing the Hon. John Walpole Willis, then a Judge of the King's Bench, Chancellor, to afford relief to Mr. Randall from the injustice thus done him.

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* See documents—letter D.
† See documents—letter C.

BILL.

"Whereas Robert Randall has, by petition, complained that he has suffered "great loss and injustice under a judgment obtained against him in the Court of "King's Bench, in this Province, by Henry John Boulton, Esquire, His Majesty's "Solicitor General, which judgment the Petitioner alleges was obtained against the "rules of law and equity; and whereas adequate relief cannot be afforded by the said "Court of King's Bench, and it is therefore expedient that an inquiry should be "made into the wrongs alleged, and right be caused to be done, if upon due inquiry "under oath it shall be made to appear that such great injustice has been done: Be "it therefore enacted, by the King's most Excellent Majesty, &c. That it shall and "may be lawful for the Hon. *John Walpole Willis*, one of His Majesty's Justices of "the Court of King's Bench, in and for the Province of Upper Canada, under and "by virtue of this Act, at York, in the Home District, to inquire into the truth of the "statements in the said Petition set forth, and for the purpose of that inquiry it shall "and may be lawful for the said Hon. *John Walpole Willis*, in the presence of the "parties or their Attorneys, or such of them as shall, after due notice, appear, to "summon and examine upon oath all witnesses deemed necessary for the attainment "of justice between the parties, and to enable the said Hon. *John Walpole Willis* to "inform his judgment in making his decree or decrees as hereinafter mentioned; "and any person convicted of wilful false swearing before the said Hon. *John Wal-*"*pole Willis*, under this Act, shall be liable to the same punishment as is now inflicted "by the laws of the Province upon persons guilty of perjury.

"And be it &c., That the aforesaid matter shall be heard and determined and "the witnesses examined in an open Court whereunto all His Majesty's subjects shall "have free access; Provided always, that it shall and may be lawful for the said "Hon. *John Walpole Willis* to commit any person for a contempt of the Court for a "period not exceeding one month, and to fine such person a sum not exceeding fifty "pounds.

"And be it &c., That it shall and may be lawful for the said Hon. *John Wal-*"*pole Willis*, having heard the said Petitioner, and the said Henry John Boulton, "and such other persons as he the said Hon. *John Walpole Willis* shall summon, or "such of them as shall appear after due notice, to make such decree or decrees for "either the confirmation or the reversal of said judgment, and of the proceedings "thereupon, and of any rules of law heretofore made under and by virtue of the said "judgment, as he the said Hon. *John Walpole Willis* shall deem necessary for the "doing of justice between all parties interested in the matter."

"*And be it, &c.*, That any decree made by the said Hon. *John Walpole Willis*, "under and by virtue of this Act, shall be obligatory and binding upon the person "against whom or in whose favour the same shall be made; and if any person "against whom or in whose favour any decree shall be made, shall neglect or refuse "to comply therewith, it shall and may be lawful for any person interested in such "decree to have the same registered, which decree, so registered, shall have the "same virtue and effect as if the said decree had been literally obeyed.

"*And be it, &c.*, That every decree made by the said Hon. *John Walpole* "*Willis*, shall be under his hand and seal, attested by two witnesses, and made "on or before the first day of January, one thousand eight hundred and twenty-nine.

"*And be it, &c.*, That upon the production of any decree aforesaid, and a copy "thereof, to the Register of any County or Riding in this Province, in whose County "or Riding the land in the said decree mentioned shall lie, and upon an affidavit "made before such Register, or his Deputy, or any Commissioner of the King's "Bench for taking affidavits, of the due execution of the said decree or decrees before "such Register, it shall and may be lawful for him to register the said decree in his

"office, and to fyle the copy thereof, and for such registry and fyling to demand and "receive the sum of one pound.

"*And be it, &c.*, That it shall and may be lawful for the said Hon. *John Walpole* "*Willis* to award against either of the parties, such costs and charges as he shall "deem right and just; for the recovery of which costs and charges, so awarded, it "shall and may be lawful for the party interested to proceed by action of debt in "any Court of record in this Province."

The above Bill passed the Legislative Assembly, but the Legislative Council, as then constituted, refused either to amend or pass it—they threw it out.

In the next Legislature, Hon. Doctor Baldwin and William L. Mackenzie introduced the following Bill, appointing the Hon. Louis Joseph Papineau, (then Speaker of the Lower Canada Assembly,) Chancellor, to afford relief to Mr. Randall. (Judge Willis had gone to Europe.)

BILL.

"Whereas Robert Randall has, by petition complained, that he has suffered "great loss and injustice under a judgment obtained against him in the Court of "King's Bench, in this Province, by Henry John Boulton, Esquire, His Majesty's "then Solicitor General, which judgment, the Petitioner alleges, was obtained against "the rules of law and equity; and whereas adequate relief cannot be afforded by "the said Court of King's Bench, it is therefore expedient, that an inquiry should be "made into the wrongs alleged, and right be caused to be done, if, upon due inquiry "under oath, it shall be made to appear that such great injustice has been done; "*Be it therefore, &c.*, That it shall and may be lawful for the Honorable *Louis* "*Joseph Papineau*, Speaker of the House of Assembly of Lower Canada, under and "by virtue of this Act, at York, in the Home District, to inqnire into the truth of "the statements in the said petition set forth; and for the purpose of that inquiry, it "shall and may be lawful for the said *Louis Joseph Papineau*, in the presence of "the parties or their Attorneys, or such of them as shall, after due notice, appear, to "summon and examine, upon oath, all witnesses deemed necessary for the attain-"ment of justice between the parties, and to enable the said *Louis Joseph Papineau* "to inform his judgment in making his decree or decrees, as hereinafter mentioned; "and any person convicted of wilful false swearing before the said *Louis Joseph* "*Papineau*, under this Act, shall be liable to the same punishment as is now in-"flicted by the laws of this Province upon persons guilty of perjury.

"*And be it, &c.*, That the aforesaid matter shall be heard and determined, and "the witnesses examined, in an open Court whereunto all His Majesty's subjects "shall have free access: Provided always, that it shall and may be lawful for the said "*Louis Joseph Papineau* to commit any person for a contempt of the Court, for a "period not exceeding one month, and to fine such person a sum not exceeding "fifty pounds.

"*And be it, &c.*, That it shall and may be lawful for the said *Louis Joseph* "*Papineau*, having heard the said Petitioner, and the said Henry John Boulton, and "such other persons as he the said *Louis Joseph Papineau* shall summon, or such "of them as shall appear after due notice, to make such decree or decrees, for either "the confirmation, or the reversal of the said judgment and of the proceedings had "thereupon, and of any sales of land heretofore made, under and by virtue of the "said judgment, as he the said *Louis Joseph Papineau* shall deem necessary for "the doing of justice between all parties interested in the matter.

"*And be it, &c.*, That any decree made by the said *Louis Joseph Papineau*, "under and by virtue of this Act, shall be obligatory and binding upon the person "against whom, or in whose favor, the same shall be made; and if any person against "whom, and in whose favor, any decree shall be made, shall neglect or refuse to "comply therewith, it shall and may be lawful for any person interested in such de- "cree to have the same registered, which decree, so registered, shall have the same "virtue and effect as if the said decree had been literally obeyed.

"*And be it, &c.*, That every decree made by the said *Louis Joseph Papineau*, "shall be under his hand and seal, attested by two witnesses, and made on or before "the first day of September, in the year one thousand eight hundred and thirty-one.

"*And be it, &c.*, That upon the production of any decree aforesaid, and a copy "thereof, to the Register of any County or Riding in this Province, in whose County "or Riding the land in the said decree mentioned shall be, and upon an affidavit "made before such Register, or his deputy, or any Commissioner of the King's "Bench for taking affidavits, of the due execution of the said decree or decrees be- "fore such Register, it shall and may be lawful for him to register the said decree "in his office, and to fyle the copy thereof, and for such registry and fyling to demand "and receive the sum of one pound.

"*And be it, &c.*, That it shall and may be lawful for the said *Louis Joseph* "*Papineau* to award against either of the parties such costs and charges as he shall "deem right and just, and for the recovery of which costs and charges so awarded, "it shall and may be lawful for the party interested to proceed by action of debt in "any Court of record in this Province."

On the question of its passage in Assembly, the Yeas were, Messrs. François Baby, Doctor Baldwin, Blacklock, Brouse, Buell, Cawthra, Dalton, Dickson (of Niagara,) Fraser, George Hamilton, Henderson, Hopkins, Hornor, Ketchum, Lefferty, Longley, Lyons, McCall, Mackenzie, Malcolm, William Morris, Perry, Radenhurst, John Rolph, Shaver, Smith of Durham, Terry, Thomson, Wilkinson, James Wilson, and Woodruff,—31. The Nays were only two, Messrs. Bethune and John Willson.

The Legislative Council, as then constituted, refused either to amend or pass the Bill—they threw it out, assigning no reasons. In 1834, Mr. Randall died. In 1835, W. L. Mackenzie gave notice, in the Upper Canada Gazette, of an application for a third Bill for the relief of Randall's devisees; the Legislative Assembly appointed Messrs. Thorburn, Macmicking, and Waters, of Ottawa, a Select Committee on Mackenzie's petition, and Mr. Thorburn introduced a (third) Bill, unanimously agreed to by the Committee, for relief of said devisees, (March 6, 1835,) but the Gazette notice was deemed defective. In the Session of 1836, after ample notice to all whose interests might be affected, a special Committee was appointed by a third Upper Canada Legislative Assembly, consisting of David Thorburn, Esquire, (now Indian Agent, Grand River,) Chairman, Mr. Small, County Judge, Middlesex, late Mr. Macmicking, late Mr. James Wilson of Prince Edward, and Mr. Gibson of South York, who unanimously reported as follows, (and their Report, and the Report of the Special Committee of 1828, with the evidence taken on both occasions, are embraced in No. 76 of Sessions papers appended to the Upper Canada Journals of Assembly in 1836.)

No. 76.

FIRST REPORT:

From the Select Committee to which was referred the petition of William L. Mackenzie, Esquire, acting Executor to the estate of the late Robert Randall, of Chippawa, in the County of Lincoln, Esquire, or so much of the said petition as relates to the Nepean and Chaudière Estate, County of Carleton.

MEMBERS OF COMMITTEE:

DAVID THORBURN, ESQUIRE, Chairman.

MR. MACMICKING, | MR. JAMES WILSON, and
MR. SMALL, | MR. GIBSON.

" *To the Honorable the House of Assembly, &c., &c., &c.*

" The Select Committee to which was referred the petition of W. L. Mackenzie, Esquire, acting Executor of the Estate of the late Robert Randall, in his life time, of Chippawa, in the County of Lincoln, Esquire, have inquired into the matters referred to them, so far as concerns the estate at the Nepean and Chaudière, and beg leave to submit the following as a first Report:—

" In the year 1809, Mr. Randall obtained a grant from the Crown of one thousand acres of land, and a deed for 950 acres in the County of Carleton, part of which included water privileges of extraordinary value. His agents in obtaining this property were the late Honorable Mr. Justice Boulton, and his son Mr. H. J. Boulton, late Attorney General of this Province, who thus possessed the means of acquiring a knowledge of the worth of the grants.

" The remarkable circumstances under which Mr. Randall's lands were sacrificed—the unusual hardships of his case, and the renewed efforts he made to obtain justice, are well known to the Country.

" In 1828 he applied, by petition, to the House of Assembly for such redress as it was in the power of the House to afford, and a Special Committee was appointed, consisting of the Honorable M. S. Bidwell, now the Speaker of this House, the Honorable John Beverly Robinson, Chief Justice of Upper Canada, the Honorable John Rolph, B. C. Beardsley, Esquire, now of New Brunswick, and the late Capt. John Matthews.

" An attested copy of this Petition, with the interesting Report of that Committee, and the evidence on which it was founded, are hereto annexed, also a copy of the Bill which its Chairman reported, appointing a Court of Equitable Jurisdiction to do justice in the case, the Honorable Justice Willis to be the Judge. The House of Assembly passed the Bill, but the Legislative Council, being opposed, it is presumed, to its principle, declined to amend it—they threw it out. Mr. Randall had previously applied to the Court of King's Bench, but from that institution he obtained no redress.

" On the 14th of March, 1829, the House of Assembly addressed His Majesty on the state of the administration of justice. We quote two paragraphs:—

" *By the Provincial Act erecting that Court* (the King's Bench) *it is wisely provided* " ' *that a Chief Justice, together with two puisne Judges shall preside therein.' No explan-* " *ation can add to the clearness of that provision, so obviously conducive to the safety and* " *liberty of the subject, and it has become our urgent duty, humbly to declare to Your Majesty,* " *that our duty forbids us to yield to the attempts of the local administration, to entail upon us*

" *the dangerous encroachments made in years of past misrule, by establishing such a construc-*
" *tion of that law as would place the rights and liberties, the property and lives of the*
" *people of this Province, at the disposal of* one *while a liberal salary is provided for* three
" *Judges.*

" *In Michaelmas Term last, Mr. Justice Hagerman alone constituted our Court of*
" *King's Bench, wherein he confirmed his own questioned Judgment. At the preceding Assizes,*
" *in a trial in which Mr. Justice Sherwood was interested, the result of which trial involved*
" *a property of very great value, acquired through those extraordinary judicial proceed-*
" *ings in the case of Mr. Randall, whose injustice has long been unavailingly an object of*
" *Legislative relief and public sympathy. It is from such proceedings, such Courts, and such*
" *Judges, that the people desire to be relieved.*"

" In 1832 the House of Commons of the United Kingdom addressed His Majesty, requesting that a copy of the above mentioned Address from Upper Canada might be laid before it. His Majesty sent it down, and the House ordered it to be printed and placed among its records, but Mr. Randall obtained no relief.

" In 1830 he again petitioned the House of Assembly for redress, and a bill was introduced, ordered to a third reading by a vote of 33 to 2, and passed by a vote of thirty one to two, appointing the Honorable Louis Joseph Papineau, Speaker of the House of Assembly of Lower Canada, a Judge in Equity, to try the case and do justice, but the Legislative Council, being as before, it is presumed, opposed to the principle of the Bill, it was found on an examination of their Journals, on the motion of Mr. Perry, that they had ordered its further consideration to be deferred three months.

" In 1830 Mr. Randall applied, by petition, to His Excellency Sir John Colborne, stating his case and exhibiting the proceedings had by Mr. Boulton, but his application was productive of no beneficial results, his petition and reply are hereto appended.

" In 1833 he applied to the Governor in Chief on the subject, we annex hereto the Correspondence.

" In 1834, Mr. Randall died, having spent nearly seven years of his life in a Prison, and the last thirteen years of it in a series of vain and fruitless efforts, to obtain in Upper Canada, that tardy justice which the defective organization of our Judicial Institutions, the personally interested situation of some of our Judges, and the character and composition of the Legislative Council, denied him. His Executors under the Will, the late Colonel Thomas Hornor and the present petitioner, took, it is presumed, such steps as they believed to be the best, on behalf of his estate, when the cholera carried off the former, and nothing further was done in the matter of the Chaudière property until last Session, when Mr. Mackenzie applied for the interposition of the House, which appointed a Committee, and a Bill was a third time reported in a third Parliament for the adjudication of the claim according to equity. But as it had been omitted to give a notice in the Gazette, in the matter, which affected private rights, further proceedings were deferred till the present Session.

" After some difficulties as to the style and tenor of the notice, an advertisement was placed in the Upper Canada Gazette, and the matter is now brought *for the fourth time* before the Legislature by petition.

" The correspondence between the late Mr. Justice Boulton, Mr. H. J. Boulton and Mr. Randall, at the time the former acted as Agents in obtaining the property from the Crown, a letter to Lieutenant Governor Gore, from Mr. McGillivray, of the North West Company ; and a letter from Captain Le Breton and others, who wished to buy the Chaudière property or parts of it, are reported herewith. Mr. Waters, a Member of the House for the District of Ottawa, was desired last summer to make inquiry as to the worth of the Chaudière property, and in whose possession it was ; and your Committee have examined that gentleman, who is of opinion that it is worth about £20,000, and will greatly increase in value.

"In the concluding paragraph to the Report of 1828, we find the following passage:—

"*Your Committee have to remark that Mr. Boulton was conducting a cause for himself "against his own client, and when they consider the nature of the debt, the great and multi- "plied irregularities by which the judgment and execution were obtained—the great value of "the property sacrificed; and the expensive and fruitless endeavors of the Petitioner to "obtain a reversal of the proceedings, they do not hesitate to recommend relief. Independent "of the interest of one of the Judges, it appears that the Court of King's Bench, if they set "the proceedings aside, could not afford adequate relief, and therefore your Committee have "reported a bill enabling the Honorable Mr. Justice Willis to inquire into the matter "alleged in the petition, and to do justice between all the persons interested.*"

"Eight years have elapsed since the bill mentioned in the above extract was reported—the veto of another branch of the Legislature continued to withhold redress from the complainant, until the grave closed on his importunities.

"For the relief of his heirs this Committee do now report a similar bill to those passed in 1828 and 1830, and its Members unite in the expression of a wish that a judicial inquiry will no longer be deferred, but that justice will be speedily done between all the persons concerned.

"DAVID THORBURN, Chairman.

"Committee Room, House of Assembly,
"30th March, 1836."

FOR EVIDENCE SEE APPENDIX (B.)

Mr. Thorburn, for the Committee, then introduced a (fourth) bill for the relief of Randall's heirs, which passed through a Committee of the Whole, 28 Ayes to 10 Noes; and at its third reading unanimously. This bill was similar to the three bills preceding it, except that it appointed Hon. ***R. A. Tucker***; who had been Chief Justice of Newfoundland, and was afterward a member of Sir George Arthur's Executive Council, (a gentleman of strong conservative opinions) as the Chancellor, to do justice in the cause.

The Legislative Council, as then constituted, sought not to amend the bill—they threw it out—would give no relief, and offered no reasons for their refusal. The Assembly placed the Report and evidence as a record on their Journals, of which they occupy 31 folio pages. Next year (1837) came the political difficulties, the result of which exiled many Members of the Legislatures of the Canadas, and prevented this Petitioner from taking further steps in fulfilment of the trust reposed in him. Colonel Thomas Hornor, M. P. P. for Oxford, the other acting Executor, died, of cholera, a few months after Mr. Randall's decease.

Not till 1828, did Mr. Justice Sherwood and Capt. Le Breton, the purchasers of Randall's invaluable Bytown Estate, attempt the ejection of his tenants, Messrs. Firth and Berry. The course of ejectment then taken is described by the House of Assembly, in their Address to the Crown, as being of a piece with the other judicial acts in Randall's case. "***It is from such proceedings, such Courts, and such Judges (they say), that the people desire to be relieved.***"

In 1828, Judges Sir W. Campbell, Willis and Sherwood, constituted the Court of King's Bench; Campbell got leave to go to London to seek a pension, leaving no casting voice in appeals in banc; Judge Willis considered the Court incomplete, and Messrs. P. Robinson, Dr. Strachan, and Macaulay, the Executive Council,

suspended him, and put Mr. Hagerman, the Collector of Customs at Kingston, (Mr. Macaulay's brother-in-law,) in his place. Hagerman was sent to Perth to hold the Fall Assizes that year, where his brother Judge (Sherwood's) ejectment trial, against Randall, was to come on.

The Earl of Dalhousie, then Governor General of Canada, having been instructed that Sherwood and LeBreton's title was bad, wrote as follows, on behalf of Randall's tenants:

"*I should not object to lease a small Lot on the Clergy Reserve adjoining the Richmond Landing, to the Petitioner, Berry; but I am more than ever convinced that the purchase of Captain LeBreton is an illegal purchase of the Landing Lot (Randall's), and I therefore advise Berry to avoid removal while he can, the more so as Government has, in my opinion, a strong claim upon it for public service. Quebec, Dec.* 10, 1822." Again, "*Quebec, August* 8, 1828," immediately before the trial at Perth, Lord Dalhousie wrote to Mr. Firth,

"*That lot of Government property being a broken front, not included in Randall's Lot, has been claimed by Mr. Sherwood; I am convinced that he has no fair claim, nor legal right to it; and, on the part of the Government, I have maintained the Firths in their possession; and I think they ought to be maintained in it, against the pretensions set up by LeBreton and Mr. Sherwood.*" "DALHOUSIE."

His Lordship caused Mr. Jonas Jones to be written to, and then Judge Sherwood retained Mr. Jonas Jones on his side of the question. Lord Dalhousie also instructed the then Attorney General, West, to aid Randall in his defence, who, not being able to attend, wrote him (Randall) as follows:

"YORK, 19*th July*, 1828.

"*Sir,—An action of ejectment is brought by Mr. Sherwood against one Firth, who is in possession of part of the Lot at Point Nepean, on the Ottawa River, which you complain has been illegally sold under an execution against you. I am defending the action, and have instructed Mr. Radenhurst of Perth, to manage the defence at the trial. If the sale was illegal for any cause stated by you, and more particularly for want of being fairly advertised, you have now an opportunity to take the opinion of the Court upon it, by enabling Firth to urge that objection against the Plaintiff's title.*

"*The Assizes for Perth commence on the* 18*th August. Any evidence you can furnish on the subject, or any professional assistance which you may desire to engage, Mr. Radenhurst will willingly avail himself of.*

"I am, Sir,
"Your obedient servant,
"JOHN B. ROBINSON."

"Robert Randall, Esq."

Mr. Randall thus instructed Firth:

"You will perceive that I have instructed Mr. Radenhurst to urge the illegality "of the Court, as now constituted—the want of sufficient notice to purchasers, and "on this last head you will do well to bring forward all the proof possible, particularly Mr. Wright of Hull, as it is a strong point—the injustice of the proceedings "here—the manner of obtaining the judgment—the view taken of the subject by the "House of Assembly, as may be seen by the bill which passed that House. Mr. "(William) Morris, the Member for your District, though he did not agree to the "bill, bore testimony to the irregularity of the proceedings, and said that if a bill "had been brought in to refer the whole case to the Court of King's Bench, he

"would (under the circumstances) have given it the sanction of his vote. *You can "prove to the Court that one acre, if the property had been duly advertised, would have paid "Mr. Boulton's pretended claim, for which the 276 acres were unjustly sold.* * * * * "The Hon. J. B. Macaulay, engaged for Sherwood, was the person that swore he "did not know my residence in the Home District, although he knew I lived in the "Niagara District and not in the Home District."

Mr. Radenhurst's letter, copied from the Journals of Assembly, will show what degree of fairness was meted out to Mr. Randall at Perth:

"PERTH, 23*rd August*, 1828.

"Robert Randall, Esq.

"DEAR SIR,—I received your several letters with the documents enclosed, "respecting the suit of *Doe ex Dem* Sherwood *vs.* Firth and Berry, for part of the "land formerly your property at Nepean Point. Many of the papers you sent were "entirely useless, as the Judge would not permit evidence to show how the judg- "ment in Boulton's suit was obtained. Nor could I, in addressing the jury (as you "advised) allude to that circumstance, but was entirely confined to what was put "in evidence by the Plaintiff, viz., the judgment, executions, and sale; and even in "this I was once or twice interrupted by the opposite Counsel, Jonas Jones, and "censured by the Court (Hagerman) for what they considered exceeding my bounds.

"I objected, as you requested I should, to the trial proceeding at all, which the "Judge paid no attention to, as he considered it was casting a censure on the "conduct of the Court of King's Bench, which he could not listen to. The Plaintiff "did not produce any notice of the sale whatever, nor show that any such was "given previous to the sale taking place. Upon this and some other points I moved "for a non-suit, and the Judge reserved the points. We were also anxious to show "that Colonel By required the property for the Government use, for the purpose of "the Rideau Canal; this evidence the Judge refused receiving. In fact he seemed "unwilling that any point that could operate in your's or the tenants' favour should "go to the jury; and as the jury at that Assize were persons little acquainted with "their duty or with Courts of Law, they implicitly followed the direction of the "Court, which, in this case, was for the Plaintiff, and gave a verdict accordingly.

"I remain,
Your obedient servant,

"THOS. RADENHURST."

Mr. Randall appealed to the Court of King's Bench, in banc, questioning the judgment of Mr. Hagerman at Perth, and there sat Mr. Hagerman, alone, the whole Court, and confirmed his own judgment below, the chief Judge being in London after a pension; his coadjutor, Willis, suspended from his functions; and the third Judge, Sherwood, a party in the cause.

Anticipating that this course might be attempted, Mr. Justice Willis wrote the British Colonial Minister from Bath, Sept. 23, that year, as follows: "*It is evident "that no Judge of the Court of King's Bench in Upper Canada can sue or be sued in that "Court, while he is personally discharging his judicial functions, as he would be unlawfully "Judge in his own cause. The difficulty contemplated by Mr. Sherwood, as arising from the "Act being construed to insist upon the presence of all the three Judges, would be increased "rather than obviated by a less strict interpretation of the law permitting the competency of "the Bench when composed of less than three members. For example: in the action of Eject- "ment brought by Mr. Justice Sherwood himself, for land at Brockville, arising out of the*

"notorious cause of Mr. Solicitor Boulton vs. *Randall; (see the proceedings of the Provin-"cial Parliament in this case;) should the action have been tried at the last Assizes by Mr. "Hagerman, now acting as a Judge of the Court of King's Bench, and for any misdirection "or impropriety on his part at the trial at Nisi Prius, a new trial be moved for, who is to "decide? Surely Mr. Justice Sherwood (if a Judge) cannot, because he is a party; and "Mr. Hagerman ought not, because his own judgment is called in question. In such a case "—a case probably at this moment pending—the construction of the Act contended for by Mr. "J. Sherwood would, so far from obviating difficulties, increase them tenfold; and place "beyond the possibility of doubt the wisdom of the Legislature in providing that a Chief "Justice, together with two Puisne Justices, should preside in the said Court. There "always should and must be three Judges present, a Chief and two Puisne Judges, to act "legally in the Court of King's Bench in Upper Canada. If any one of them be a party in "a cause, the only inconvenience thereby arising is, that until the obvious course I have "mentioned be taken, the Court cannot proceed in that cause."*

May it therefore please Your Honorable House to cause inquiry to be made into the allegations contained in this humble appeal to your equity and justice, to consider whether the oppressions complained of require your direct interference, whether the course pursued by Mr. Boulton toward the deceased, Robert Randall, was that of a fair and candid legal adviser, or whether it was fraudulent and deceitful—whether the note taken from Randall at Niagara was for a full and fair consideration, or the contrary,—whether Boulton deserted his client in his time of need, while secretly and deceitfully, under color of law, but in defiance of its material precepts, seizing a valuable estate and selling it, the distressed owner thereof not even knowing that there had been a lawsuit carried on against him by his own lawyer, and the property being so very secretly sold, that not even those in the immediate neighbourhood of it knew of an intended sale by auction,—one brother-in-law being the buyer, another the Sheriff, a third the seller. Whether Mr. Boulton's services to Randall entitled him over and above the retaining fees paid him, to take a mortgage on Randall's real estate, leave his lawsuit unfinished, and hold on to the mortgage after he had despoiled his client secretly of his choicest estate, the value of which he had long known, having, with his father, the Judge, been previously employed to get a patent for it for his client, from the Crown,—whether as "misrepresentation, whether by word or deed constitutes fraud," Boulton's misrepresentations to the Court of King's Bench, before he got his judgment, did not constitute fraud, seeing that no care, wisdom or foresight on Randall's part, could have proved a protection from his attorney's machinations?—whether, as the Statute required that a demand for Randall to plead to Boulton's declaration should be left at Randall's usual place of abode, the leaving it at a place a hundred miles distant, and where Boulton knew that Randall had never lived, was not such an intentional deception "whereby "one party has taken an unconscientious advantage of another as constitutes actual "fraud?"—whether "as without the express provision of an Act of Parliament, all "deceitful practices in defrauding, or endeavouring to defraud another of his known "right, by means of some artful device, contrary to the plain rules of common "honesty, are condemned by the common law," the Court of King's Bench was, or was not in error in refusing redress when Randall's Counsel, Messrs. Stewart and Rolph, made prompt applications for relief, it being the general policy of Courts of Justice "to protect the suitors, and to overhaul judgments after a considerable lapse of time, even when regularly obtained by a solicitor against his client for security for costs?" whether, if such a course of conduct as the report of the Committee of the House of Assembly of Upper Canada have shewn Mr. Boulton to have pursued, was not checked, there would be any bounds to the crushing influence of the power of an Attorney who has the weighty affairs of a man, especially an embarrassed man, in his hands?—whether, as it is set down as the rule in equity, by the highest "authorities, that if a sale of an estate "at public auction be obtained under cir-

"cumstances which shall establish clearly, that the fair market value has not "been obtained, and that reasonable precautions and advertisements have not been "used for this purpose, and that parties have connived in such a manner as "to make the sale appear to be a public and free sale, when it is in fact a mere "cover of a private arrangement, then no such inference can arise in the favour "of the *bona fides* of the auction," the sale of Lot No. 40, in Nepean on the Ottawa, was or was not fraudful?—whether, as the Upper Canada House of Assembly, in 1828, after full inquiry, in another House, in 1830, and in a third House in 1836, passed Bills to render to Randall, and to his divisees, after his decease, all the justice in their power, which Bills the Legislative Council of those days would neither pass or amend, the United Legislature will, now that many difficulties are removed, agree to a measure of efficient redress?—whether the manner in which the Chaudière ejectment suit was carried through, and Randall's tenants dispossessed in 1828, this done in the name of the Crown and of the law, was, or was not a daring series of acts of fraud and oppression, in defiance of common law and justice, to this hour loudly demanding redress, seeing that the parties interested have continually prayed for Legislative interference, seeing that the Crown was addressed by the Commons of Canada West, to the effect that from the Courts and Judges who had thus wronged Robert Randall, the people earnestly desired to be delivered, that "every delay arising from fraud adds to its injustice, and multiplies the oppression," and that "fraud will vitiate any, even the most solemn transactions, and an asserted title to property founded upon it, is utterly void."

May it please your Honorable House to pass an enactment similar to the Randall Relief Bills of 1828, 1830, 1835, and 1836, and so as to enable the late R. Randall's acting Executor or Executors to carry testator's intention, as regards the recovery and the sale of his real estate, and the distribution of the proceeds thereof among his devisees, into full effect, or to grant such other equitable relief in the premises as, on full inquiry, may appear to be just and right, under the rule "that "wherever confidence is reposed, and one party has it in his power, in a secret "manner for his own advantage, to sacrifice those interests which he is bound to "protect, he will not be permitted to hold any such advantage."

And Your Petitioner will ever pray.

WILLIAM L. MACKENZIE,
Acting Executor under the will of the late
Robert Randall, Esquire.

DOCUMENTS REFERRED TO, IN THE PETITION.

(A)

(Copy.)
Governor in Chief the Earl of Dalhousie's Decision on A. Berrie's Petition for an acre of the Clergy Reserve, Lot 39, Nepean, Ottawa Front.

"I should not object to lease a small Lot on the "Clergy Reserve (meaning No. 39) adjoining the "Richmond Landing, to the Petitioner Berry, but "I am more than ever convinced that the pur-"chase of Captain LeBreton is an illegal purchase "of the Landing Lot, [meaning Lot No. 40, granted "to R. Randall,] and therefore advise Berry to "avoid removal [from Lot 40] while he can—the "more so as Government has, in my opinion, a "strong claim upon it, for public service.

(Signed,) "DALHOUSIE."

"Quebec, 10th Dec., 1822."

"A True Copy.—This was the last decision "given by His Lordship on this case.

"(Signed,) JOHN PARKER,
"Capt. & D. A. Q. M. G.

"2nd Oct., 1823."

(Copy.)
Governor in Chief the Earl of Dalhousie, to Mrs. Isaac Firth, relative to the Lots 39 and 40, Nepean, on the Ottawa.

"TO MRS. FIRTH."

(Copy.)

"At the desire of Mrs. Firth, at the Richmond Landing, near Bytown, I give her this note to certify, that, several years ago, I gave her and her husband, leave to establish themselves in a small house and store belonging to Government at that place: it was originally placed there by the Duke

of Richmond, to aid the passage of Emigrants, Military Settlers. Being no longer useful it fell to ruin, and in these circumstances these persons repaired it, and have been permitted to occupy it. I have been led to believe that it stands on the line of Government property, and a Clergy Reserve set aside by Sir P. Maitland for the service of Government. That Lot of Government property, being a broken front not included in Randall's Lot, has been claimed by Mr. Sherwood. I am convinced that he has no fair claim, nor legal right to it; and on the part of Government I have maintained the Firths in their possession, and I think they ought to be maintained in it against the pretentions set up by LeBreton and Mr. Sherwood.

"DALHOUSIE.

"Quebec, 8th August, 1828."

(B)

HON. GEORGE S. BOULTON TO MAJOR RANDALL.

Brockville, *7th Sept.*, 1816.

Dear Sir,—Your letter came to hand a day or two ago, but my father finds it totally impossible to attend the Assizes in the District of Niagara. In consequence, Mr. Jarvis has been written to on this subject, and I have no doubt he will pay due attention to it. In the mean time see Mr. Cameron and get him to prepare a brief for Mr. Jarvis. When Mr. Jarvis arrives you had better see him and give him two guineas as a retainer.

The business (if you think proper) Mr. Jarvis will try and put off until next year, when my father will attend. If that cannot be done, Mr. Jarvis, I am sure, will exert himself for you. In haste.

Yours truly,
G. S. BOULTON.

Robert Randall vs. *Elijah Phelps.*

The arbitrators in this cause refuse to go into the consideration of the subject in dispute between the above parties upon the following grounds: That Mr. Bearsdley, the Counsel for the Defendant, requires the evidence of a supposed contract between his client and the Plaintiff, for the conveyance of the premises mentioned in the pleadings of this cause, to Mr. McCulloch, which Mr. Boulton, Counsel for Mr. Randall, objects to, and because they cannot appoint an umpire who is unobjectionable to either party.

H. J. BOULTON.

31st Dec., 1816.

(C)

PROCEEDINGS IN THE COURT OF KING'S BENCH.

(*From Campbell's Manuscript Reports.*)

Easter Term, 5th Geo. IV.,
April, 30*th*, 1824.

Boulton vs. *Randall.*

This Court fully recognizes the Rule of Hilary Term, 3rd, James I, which orders that no cause once argued and determined, shall again be brought before the Court.

In this case, *Rolph* applied for a Rule to shew cause why the proceedings and judgment should not be set aside for irregularity; and why the writ of fieri facias, issued upon the said judgment, against the lands and tenements of the Defendant, should not be superseded, with costs, and restitution made to the Defendants.

A judgment by default had been signed in this case, and execution issued, and the lands sold under it, several years ago; and an application, similar to the present, had been made by Stewart of Counsel for the Defendant, who, in Michaelmas Term, 1821, had obtained a Rule Nisi, but which, upon argument, had been discharged.

Various irregularities were, upon the present application, pointed out by Mr. Rolph, some of which had probably not been insisted upon by Mr. Stewart in the former motion.

The Counsel now went considerably at length into the supposed irregularities, and also read an affidavit (which was fyled) containing a statement of those irregularities, and of the facts and merits of the Applicant's case,—adverting also to the partial want of consideration of the debt upon which the judgment was obtained. He also cited many cases of new trials at law and re-hearings in equity, which he considered analogous.

Robinson, Attorney General, contra—read an affidavit rebutting those facts and circumstances, but relied upon the universal practice of Courts of Law (to which no exception could be found) which does not permit a cause once determined, upon motion and argument, to be again brought forward, either upon the ground of the same or other irregularities, not before insisted upon. He cited and read the Rule of Hilary Term, 3rd, James I, by which it is ordered, "That if any "cause shall first be moved in Court, in the pre- "sence of the Counsel of both parties, and the "Court shall thereupon order between those par- "ties, if the same cause shall again be moved, "contrary to that Rule given by the Court, then "attachment shall go against him who shall pro- "cure that motion to be made contrary to the "Rule of Court so first made; and that the Coun- "sel who so moves, having notice of the said "former Rule, shall not be heard here in Court in "any cause in that Term, in which that cause "shall be so moved, contrary to the Rule of Court "in forma aforesaid." The Counsel also cited authorities, to shew that no motion can be made upon the ground of irregularities, not noticed upon a first motion.

Campbell, Justice.—Upon the opening this matter, I thought it strange, and was indignant that the irregularities pointed out by the Defendant's Counsel should have taken place. Whatever were the grounds, it now appears that those irregularities have been discussed and decided upon for many Terms back. The Counsel has referred to a number of authorities which it was to be supposed he referred to, as upon a first application and discussion, but it appears that was not the case. If they are to be considered as furnishing authority for opening and re-considering

matters already decided upon, they do not apply.

Upon reference to the order in Hilary Term, 3rd James 1st, it appears such second discussions cannot be permitted. Were it not for this salutary rule, nothing could be more uncertain than the proceedings and decisions of Courts of Justice. There is also a penalty attached to the breach of the rule, which, as this is the first time it has been attempted to be infringed in this Court, I should not wish to see enforced; but upon any future attempt of the kind I should.

CHIEF JUSTICE (Powell.)—I concur with my brother Campbell, and for the reason given by him, I also consider that the penalty may be dispensed with.

Per Curiam—Application refused.

Copy of affidavit by R. Randall, in the handwriting of Hon. John Rolph.

"In the King's Bench. Henry John Boulton *vs.* Robert Randall.—Robert Randall of the Township of Stamford, in the Niagara District, Esq., the above Defendant, maketh oath and saith, that the landed property of this Deponent sold under the execution issued in this suit, (as this Deponent was informed by Mr. Morris, Member for the County of Carlton,) was not the Lot of land mortgaged to the said Henry John Boulton, who was present at the sale, as mentioned in the condition of the bond on which the said action was in part brought, but certain other lands of this Deponent's, of very great value, and for a part of which this Deponent was offered £3000 lawful money of Upper Canada, being the Landing Place, adjacent to the proposed site for the military and civil establishments of His Majesty's North American possessions."

(D)

(From Manuscript Reports.)

IN THE KING'S BENCH.

Boulton vs. *Randall*, 1824.

Trinity Term, 5th Geo. IV.,

The proper style of this Court is "before His Majesty's Justices," not before the King himself "coram vobis," not, "coram nobis."

WASHBURN, moved for an allowance of a writ of error *coram nobis.*

BOULTON, (Solicitor General)—objected that the writ should be *coram vobis,*—that all writs here should be returnable before His Majesty's Justices. In England the Court of King's Bench is ambulatory, following the person of the King, but here it is stationary. In England, the Parliament may sit in Westminster, and the Court of King's bench where the King himself is, but in this Country the Court must sit where the Parliament sits.

The ATTORNEY GENERAL, (Robinson,) observed, that if the writ was defective it might be quashed in this Court, or in Chancery. To this observation the Chief Justice (Powell) assented, observing, (with the Court) that the style of the Court hitherto adopted in writs, was improper, but that they would not interfere with a practice which had obtained for such a length of time.

Per Curiam—Writ allowed.

(E)

From Collin's Stenographic Report of the Trial of R. Randall, at Niagara, Sept. 7, 1825.

EVIDENCE OF THE HON. THOMAS CLARK.

"Witness held a Patent from the Crown for the Bridgewater Works. (The Patent was produced.) It was dated 2nd January, 181[illegible] it included the whole item sworn to by Mr. Randall, and 10½ acres more.

"*Cross-Examined by Mr. Rolph.*—Witness visited Mr. Randall while in gaol in Lower Canada—saw him in Montreal Gaol—asked him to transfer to him (witness) his (Mr. Randall's) interest in the Bridgewater Works. Mr. Randall had a claim on one-third of the Bridgewater Works, under a lease for 999 years, from General Simcoe. Witness visited Mr. Randall in Montreal Gaol for other purposes also."

Extract from Honorable John Rolph's Address to the Jury during said Trial:—

"Randall has tasted the bitterness of protracted imprisonment in a Foreign Gaol—and it is now proposed to make him suffer martyrdom in life pillory! For seven years he was immured in a dungeon in Lower Canada, where he suffered privations, the detail of which would make humanity shudder. Engaged as you are in the active and diversified pursuits of life, there is much to occupy your attention, and divert it from a thousand vexations which are attendant on the fate of the most fortunate of men; and even when business has lost its interest, or brought fatigue, nature opens her exhaustless stores, to invigorate the body, to delight the senses, and to regale the mind; but in a gaol, there is nothing to fill up a tedious existence—it is there almost worldless as the grave—no important trifles to incite desire—no prospects of success to animate with hope! Randall's care-worn soul, vacant of employment, and harrowed up by thought, was there left to turn upon itself for years to witness its own forlorn wretchedness, to mourn the prospect it had lost, and brood over the miseries to come. It was thought that the poverty and wretchedness brought upon him, would break down the spirit of the man; that nature, however buoyant, could not bear up against such complicated woes. Many, many a man, thus made a prey to accumulated sorrow, is doomed to hang the

head of despondency, and when ushered into prison, every remnant of former vigour, that might promise a successful struggle, is soon exhausted by despair. But Randall survived the wreck of his property, and the miseries of a prison."

[*Remarks by the Petitioner.*—Colonel Clark admits on oath that, although he kept Randall in prison, and sold valuable estates of his for a mere nominal price, through the Sheriff, Randall had a claim on the Falls Estate, withheld from him by Clark. Mr. Chief Justice Macaulay, when Boulton's student had been directed to swear that he (Macaulay) did not know where Randall lived in the Home District, where Boulton knew he had never lived, and that his home was a hundred miles distant, at Chippawa. Through this oath Randall was prevented from knowing that Boulton had proposed to make a demand of plea from him, which was no demand, for a scrap of paper stuck by Boulton in an Office at Toronto, was no demand from Randall, who resided a hundred miles off. Under this pretended notice, however, Boulton secretly sold one of Randall's most invaluable estates, on a claim of about £142, which he got, and Sheriff Stuart (his brother-in-law) probably kept the remainder, about £300 His heirs or assigns, under 7 Will. IV, ch. 3, §3, Sec. can plead the Statute of limitations; Randall got not a penny. Soon after, Mr. Macaulay, acting for the Crown under Boulton's directions, vainly tried to convict Randall for perjury, because he had sworn that lands thus gambled or juggled from him were still h...]

(F)

HON. M. S. BIDWELL TO W. L. MACKENZIE.

TORONTO, *18th July*, 1835.

MY DEAR SIR,—Respect for the memory of Major Randall will induce me to do cheerfully and cordially, whatever I can for his devisees, without a fee; and I, therefore, with many thanks for your liberality and kindness, return the note which you sent to me.

Yours, truly,

MARSHALL S. BIDWELL.

W. L. Mackenzie,
York Street.

(G)

MESSRS. FILLMORE, HALL AND HAVEN, TO W. L. MACKENZIE.

BUFFALO, *Feoy. 9th*, 1838.

(Copy.)

"Hon. W. L. Mackenzie, SIR,—We understand you are one of the Executors of Robert Randall, late of Chippawa, Upper Canada, deceased. We have been requested by Gerard Wilson and his sister, of Baltimore, and the representative of Randall Wallis, to make some inquiry as to the situation of the estate and its prospects. We understand you are the only Executor who has acted under the will. May we trouble you to write us immediately upon the receipt of this, and give us such information in relation to the estate and its settlement, as you can communicate from recollection, and such papers as you have under your control. From what we have been able to learn, we are led to think that Mr. Randall was greatly injured by the Government Party when living.

"Please direct your answer to M. Fillmore, M. C., Buffalo.

"We are, respectfully,

"FILLMORE, HALL & HAVEN."

[William L. Mackenzie made such a statement as his then situation permitted, and on the 14th of April, promised further information.]

Mr. Fillmore replied:

HON. MILLARD FILLMORE (now President of the U. S.,) TO W. L. MACKENZIE.

(Copy)

"WASHINGTON, *April 20th*, 1838."

"Hon. W. L. Mackenzie."

SIR,—Yours of the 14th is received. I hope it may be convenient for you to give my partners the desired information soon. You can address it to me at Buffalo, and if I am not there it will go into their hands.

I am respectfully yours,
MILLARD FILLMORE.

H.

HON. R. BALDWIN TO MR. J. H. CULP.

TORONTO, 13*th July*, 1838.

DEAR SIR,—I should be happy to afford to Mr. Randall's family, any professional assistance in my power in pursuit of any rights that may be found to be unjustly withheld from them.

It would, however, be impossible for me, consistently with my other engagements, to leave the city at this moment, and indeed from the little I do remember of the subject matter of the business to which your letter refers, it would require a much more lengthened investigation, preparatory to submitting it to the consideration of any one, than I could at this time appropriate to the purpose. It was, I believe, the subject of some Parliamentary report—if so, this might be made the foundation of an application to Lord Durham. But if the matter is to be gone into fully, with the view of any judicial action upon it, you will, I am satisfied, find that it cannot be done but at the expense of much time and labour.

Lord Durham, of course, cannot alter the legal relation of parties. An application to him for such purpose, would, therefore, be inoperative. And for any other, the Parliamentary Report, which I have not, however, at present by me, would, I

should think, answer every purpose; at least if the subject was, as I presume it was, fully gone into; I remain, Dear Sir, Your obedient servant.

ROBT. BALDWIN.

Mr. J. H. Culp, Drummondville.

I.

GEORGE MALLOCH, ESQ.,—HIS EVIDENCE.

The Petitioner, in a suit tried last fall Assizes, at Bytown, made inquiry after one of Hon. James Morris, brothers, who was at the sale of the Chaudière Estate, at Brockville, but found he had died. While George Malloch, Esq., was under examination, as a witness for Judge Sherwood's heirs and divisees, Petitioner suggested to Mr. Lyon, M.P. P., then of Counsel in the suit, to ask him whether he knew of the advertising of Lot No. 40 Nepean, Ottawa Front, or was present at the sale. He replied that he did not recollect being present at any sale, though he might have been: that Judge Sherwood, previous to the sale of Lot 40 had sent him out to Point Nepean, to ascertain its real value: that he supposed, though he did not know, that the Lot had been advertised in the *U. C. Gazette*, but had no recollection of the fact: the *Brockville Recorder* was established about the time: he (Mr. Malloch) did not remember that any notice of the sale of Randall's land was inserted in it, though it might have been.

It appeared in evidence, that Col Clark, who had acknowledged [See doct. E.] on oath the heavy claim Randall had upon the Niagara Falls, property, nevertheless kept his hold under the Crown Patent: got the £4,000 for damage done the mills in the war of 1812, and kept all from Randall, whom he had held 7 years in a gaol. He also seized Lots 10 and 11 first Concession, Rideau front, three fourths of 10, second Concession, do., and Lot 38, first Concession on the Ottawa, all in Nepean, and worth to day £11500, and the Sheriff sacrificed the whole to his own and Boulton's brother-in-law, Levius Peters Sherwood, late Judge, for £32 10s., the consideration money named in the Sheriff (Stuart's) deed. Again, in the Niagara District, 1200 acres of Randall's lands, somewhat incumbered, were sold by the Sheriff for about £40. Such was the protection property got in 1819 to 1822.

J.

CROWN LAND DEPARTMENT,

QUEBEC, 22*nd October*, 1852.

HON. JOHN ROLPH, TO W. L. MACKENZIE.

SIR,—I duly received your letter having reference to Lot 39 in Concession A. of Nepean, with enclosures. The claims set up to the Lot in question have long been under the consideration of the Government, and much conflicting action has been taken thereon at various times. The papers connected therewith are consequently voluminous. The case having thus become of importance, I am desirous that it should be thoroughly investigated, and justice done upon its merits; and I have no objection to communicate any papers calculated to throw light upon the subject to any one interested.

I have, &c.,
JOHN ROLPH.

William L. Mackenzie, Esq. M. P. P.
&c., &c., &c.
Quebec.

K.

To His Excellency, Francis Gore, Esquire, Lieutenant Governor of the Province of Upper Canada, &c., &c., &c.

IN COUNCIL.

Petition of Robert Randall, of the Town of Cornwall, in the Eastern District of the Province of Upper Canada, Merchant,

HUMBLY SHEWETH:

That your Petitioner has been resident of this Province ten years or thereabouts.

That he was the original Proprietor and Builder of the Bridgewater Mills, in the District of Niagara, being the first Mills in this Province that manufactured Flour for the European Markets.

That he was the Contractor for, and built the Church in the Town of Cornwall, whereby he sustained a considerable loss.

That your Petitioner took the oath of allegiance to his present Majesty on his becoming a resident of this Province.

Your Petitioner, therefore, prays Your Excellency, in Council, will be pleased to grant him such a proportion of his Majesty's waste Lands as Your Excellency, in Council, may think meet. and your Petitioner, as in duty bound, will ever pray.

(Signed,) ROBT. RAND
York, 20th February, 1809.

RECEIVER GENERAL'S OFFICE,

23rd February, 1809.

Mr. Robert Randall has paid into this Office forty-five pounds, eleven shillings and seven pence half penny, Halifax currency, equal to £41 0s. 5d., sterling, for Patent fee on 1000 acres of Land, granted by Order of Council of this day, under the Regulations of the 9th Jan., 1804.

(Signed,) P. SELBY,
Acting Receiver General.

To John Small, Esq.,
Clerk Executive Council.

READ IN COUNCIL,
February 29th, 1809.

The Petitioner recommended for 1000 acres of land, under the Regulations of the 6th of July, 1804.

(Signed,) THOS. SCOTT,
Chairman.

Approved,
(Signed,) FRANCIS GORE,
Lt. Governor.

—

Robert Randall: Referred to the Executive Council.

(Signed,) FRANCIS GORE,
Lt. Governor.

Certified,
WM. H. LEE,
Act C. E. C.

APPENDIX (A).

The Committee on the petition of *Robert Randall*, Esquire, met in the Joint Committee Room, February 13th, 1828.

PRESENT:

Messrs. ATTORNEY GENERAL,*
MATTHEWS,
ROLPH, and
BIDWELL.

Dr. *Lefferty* attended, and was examined.

He states that he was present at the Assizes for Niagara in 1818, where a cause of Randall *vs.* Phelps was stated to have been entered for trial—Mr. Justice Boulton presided—saw Mr. Randall there—does not know on what day of the sitting of the Court it was. He was going from the Court House to Town for his witnesses,—understanding that Mr. Boulton (the Solicitor General,) was going to call the cause on. While he was absent Mr. Boulton did call the cause on, and the Judge declined trying it, on the ground that he had been Attorney for the Plaintiff, and had instituted the action.—Dr. Lefferty then left the Court House and went to Town, and meeting Mr. Randall on the way, told him that his cause would not be tried; at which he appeared much dissatisfied, and said he had that morning given Mr. Boulton his note for 100 dollars for coming over to conduct his trial—Mr. Randall went into Court, and in his presence urged the trial of the cause, but the Judge positively declined. The Judge being pressed by Mr. Randall said he had objected to taking that Circuit, because he was unwilling to try that cause—knows that Mr. Randall paid something more than 40 dollars to an Innkeeper at Niagara for the expenses of some of his witnesses.

Mr. Randall produces a letter from Mr. Boulton, said to have been received 1st May, 1819, (marked F.)—also a letter from Mr. Boulton, dated May, 1819, (marked G.)—also a letter from Mr. Boulton, of 8th July, (marked H.)—also a copy of a letter from himself to Mr. Boulton, dated June 29th, 1819, (marked I.)—this letter he states he sent by one Jacob Dawn, to York; also a paper marked K, certified by the Deputy Clerk of the Crown, as being a correct schedule of the original papers in the cause of Mr. Boulton *vs.* Randall—was served with process on 22nd June, 1819,—and on the 29th June, wrote that letter marked I.—He saw Mr. Randall at the Assizes, in August, 1819, but did not speak to him respecting the suit.

February 21st.

The Committee met again.

The Petitioner attended.

Dr. *Lefferty* again called in and examined.

Says he remembers in 1816, Mr. Justice Boulton, then Attorney General, conducted the trial of the same cause of Randall *vs.* Phelps—A nominal verdict was given and the cause was referred to arbitration—no award was made, and it was tried at the next Assizes for Niagara.

* Now Chief Justice Robinson.

Mr. Randall states to the Committee that a different lot from that mortgaged to Mr. Boulton was sold in execution to satisfy his debt, which Mr. Boulton says he has no doubt might have been, for he gave no particular directions to the Sheriff on the subject.

William Morris, Esquire, called in and examined by Mr. Randal.

Says—he has no acquaintance with Mr. LeBreton—knows Lot No. 40, in Nepean—called Point Nepean—heard it was sold either to Captain LeBreton, or Mr. Sherwood, now Judge Sherwood—Mr. Morris's brother attended the sale—it took place at the Court House in Brockville, Nepean being then part of the District of Johnstown—does not remember how long he had heard of the sale before it took place.

He authorized his brother, being at Brockville (Alexander Morris,) to bid as much as £300 for it; he afterwards found that his brother had gone as far as £449 for it, but not liking to go further, it was bid off to Captain LeBreton or Mr. Sherwood for £450.

Being asked by Mr. Randall whether he did not tell him, Mr. Randall, during the last Parliament, that he had only heard of the sale the night before it took place, answers that it was impossible, as he had himself walked to Point Nepean, (50 miles,) to see the Lot before the sale, and had in consequence sent the directions to his brother. A Sheriff's notice of the sale was put at his, Mr. Morris's shop door in Perth, which is as public a place as any merchant's shop in Perth; it was put up as notices always are, on the inside of the door; knew nothing of the intended sale till he saw that notice—he went down, in consequence of a conversation with Dr. Thom, who had received information from some person on the Ottawa, that Point Nepean was a valuable situation, and they consequently both went on foot to see it; after his return he wrote to his brother, by post, the instructions spoken of, and he thinks that the sale took place a few days after, but he does not distinctly recollect the time.

Had he been present at the sale, he thinks he would have given as high as 7 or 800 pounds for it. If the property had been his, he thinks he would have been reluctant to have taken £2,000 for it.

Captain LeBreton was at the sale; and his impression has always been that Mr. Sherwood either participated in the purchase or assisted Captain LeBreton in making it: but he knows not how the fact really was.

The Sheriff was John Stuart, Esquire, who is still Sheriff of the District of Johnstown; he is brother-in-law to Mr. Sherwood, and to the Solicitor General.

Thinks Mr. Sherwood knew nothing of the value of the Lot until he was applied to by Captain LeBreton to join or assist him in the purchase.

Neither saw nor heard of any other notice of the sale in Perth, or the neighborhood, or in the neighborhood of the Lot—has never conversed with any of the Messrs. Wrights of Hull, about the Lot—thinks they had no knowledge of the intended sale—found at Morris's Run, about five miles from the Point, that they were ignorant of it. The notice of the sale was not likely to have attracted the attention of people in general, as the Country was then so little known.

He considered the place of great value from its situation with respect to navigation and water privileges, but not from any idea or knowledge he had of any great expenditure being likely to be made there by the Government, further than building a store or two for the reception of emigrants.

He meant, if he had bought it, to have given two or three acres to the Government for such a purpose. Thinks the Lot not worth so much now as it was then, from an establishment which has been made on a neighboring Lot by the Government since; which has occurred, it is understood, from the refusal of Captain LeBreton to part, on reasonable terms, with the Lot or part of it, *for the purposes of the Government.*

The Committee met again on

Friday, February 22nd.

William Morris called again and examined.

Asked, what sum he would have taken for allowing any person to select an acre from the Lot at Nepean Point, had it been his?—says he would not have taken less than £500, and

perhaps not that sum—because the best mill seat would probably be selected; there are several mill seats on the Lot.

Seven years ago, a village was laid out upon the Lot in question, by the present proprietors—does not know what number of houses are built there, but thinks not more than three or four.

* *The Attorney General* examined.

Was retained in 1817, to defend Elijah Phelps against Robert Randall, in which a verdict had been rendered in favor of Randall at the preceding Assizes, for £10,000—that verdict was set aside, and a new trial granted in October, 1818. He was present as Counsel for Defendant at Niagara—he rode part of the way with Mr. Justice Boulton on his way to the Assizes—it was in October, 1818—cannot say where he staid at Niagara.

He knew no more than any stranger in Court that the Judge intended not to try the cause mentioned above—that he went as Counsel prepared for the defence, when the Judge refused to try it. The Solicitor General seemed annoyed at it, and so expressed himself to him, (the Attorney General,) and thought it an unnecessary scruple on the part of the Judge; that he had been the Plaintiff's Attorney in the suit: but the Attorney General thought otherwise, and expected such refusal, though as unapprized of it as any stranger. In the course of conversation the Judge might have expressed his reluctance to try the cause, and he has an indistinct recollection of its being the case about the time of arranging the Circuits; but he had no reason to think the Judge had positively made up his mind when he left York.

The Solicitor General said that Randall had come with the intention to have it tried—that he had himself come with that expectation, and only for that cause, and that it would be a vexation to Randall.

He was never retained by Mr. Boulton as his Counsel upon any of the applications made by Mr. Randall to set aside the proceedings in Boulton *vs.* Randall. That either on the application of Mr. Stuart or Mr. Rolph, or both, he did, at the request of the Solicitor General, the grounds of objection which he stated to be against the motion, and perhaps engaged in answering the rule *nisi*. That the Solicitor General applied to the Attorney General, to oppose the Writ of Error, and he would have done so had he been present; he suggested to the Solicitor General not to object to the legality of the Writ in error, but to allow the irregularities to come into discussion in that shape before the Court, if the Court did not themselves object to it.

To this the Solicitor General assented.

But as the Attorney General then went to England, is not acquainted with the further progress of the matter.

The cause of Randall *vs.* Phelps, was tried at Niagara, in 1819, before Powell, C. J., and a special Jury. Randall in person pleaded his own cause, and not by the Solicitor General, who was not present. He heard Randall in pleading his own cause, say that he was abandoned by his Counsel, the Solicitor General,† and has no doubt Mr. Randall appealed to the indulgence of the Court upon matters of law, under the circumstances in which he was placed. The cause was called on at the request of Mr. Randall himself; that he thinks it likely the Judge told him, Randall, that every legal advantage should be afforded to him. The cause went off upon no legal objection; but it went to the Jury on the evidence; the Chief Justice charging strongly in favor of the Defendant.

Saturday, 23rd.

The Committee met.

Mr. Randall attended.

Mr. Morris again examined—

There were but four or five inhabitants in the Township of Nepean at the time of the sale, and these he thinks were what are called squatters. The river Goodwood empties into the Rideau ten or twelve miles from the mouth of the Talter; thinks there was not an inhabitant

* Hon. [illegible] B. Robinson.
† Hon. [illegible] J. Boulton.

on the river Goodwood nine or ten years ago.—Had he never seen any particular Lot on the Rideau below the river Goodwood, which might have been advertised for sale, he would not have given much for it—it is good land, however, and thinks it would now be valuable. At the time spoken of, in 1819, thinks land so situated would have been worth about seven and six pence per acre, tho' now it is worth five or six dollars—would not have thought eighty acres in that situation a good security for £100; there is no mill seat on the Rideau; on the place spoken of it is dead water.

Mr. Boulton attended and produced to the Committee a mortgage from Mr. Randall to him, dated March 17, 1817, which is the same referred to in the bond on which judgment was entered. The mortgage is upon Lot No. 11, in the first Concession of Nepean on the Rideau, for £100; to be paid 1st January, 1818. The Lot is said in the mortgage to contain 200 acres. Mr. Boulton produced a certificate from the Surveyor General, that the lot thus mortgaged contains only 78 acres: and that the patent to Mr. Randall described lots Nos. 10 and 11 in the 1st Concession as containing together only 100 acres, and Mr. Boulton calls the attention of the Committee to the circrmstance that in the mortgage, Lot No. 11 only was stated to contain 200 acres.

Mr. Boulton also produces an affidavit of Mr. Randall, sworn the 6th July, 1824, for the purpose of his qualification to be returned as a member, in which he describes the Lot in question, No, 11, as a broken Lot, whereas in his petition to the house, he states that he gave Mr. Boulton a mortgage on 200 acres of land. He also produces a certificate given by the deputy clerk of the Crown, setting forth various causes conducted to judgment by other Attorneys, viz: Fothergill *vs.* Brice; Somers *vs.* Pettit; Heron *vs.* DeWitt; McNider and Forsyth *vs.* Clarke; in which the proceedings were precisely such against the Defendants residing out of the Home District as in the case against Mr. Randall.

And he remarks that in the case of Mr. Somers *vs.* Pettit, in which Mr. Baldwin was Plaintiff's Attorney, and judgment by default was obtained in the same manner, he (the Solicitor General) was Counsel for the Defendant, and did all he could to obtain relief against the judgment, but in vain; and the judgment was confirmed.

Mr. Beardsley, a member of the Committee and also a Barrister and Attorney, states that it is perfectly notorious that the practice was so under the rule of Court, and that he heard many cases where the judgments were so obtained.

Mr. Boulton also produces his dockets, shewing that his proceedings for clients in similar cases were precisely such as took place in his action against Mr. Randall.

In particular he shews a cause in which he was plaintiff's attorney for James Samson Esqr. against the Hon. William Dickson, a Member of the Legislative Council, whose residence in the Town of Niagara was known to every person, in which cause the proceedings were just such as those of which Mr. Randall complains.

Mr. Boulton also produced a writ certified by the Clerk of the Crown, of judgments against Mr. Randall in other causes which were depending against him at the time he pressed the payment of his bond; among these is a case of Thomas Clark *vs.* Robert Randall, in which judgment was obtained for £415 13 0¼. In this case the Attorney General was concerned for the Plaintiff, and as he states that Mr. Boulton had obtained judgment against Mr. Randall a short time before Mr. Clark's could be entered up—and that he looked into the proceedings with a desire to set them aside if he could, to prevent his obtaining precedence of Mr. Clark, but finding them in accordance with the ordinary practice of the Court, as it appeared to him, he concluded there was no ground.

Mr. *McDonald*, M. P. P., called in and examined.

Mr. Boulton related to him that Mr. Randall had informed the Committee, that he (Mr. McDonald) had stated to Mr. Randall, that the advertisement of the Sheriff's sale of Mr. Randall's Lot, was put up with the face to the wall, and on the back written, "a watch to be raffled for" and Mr. Boulton asks Mr. McDonald if the fact was so, or if he ever stated such a thing to Mr. Randall.

Mr. McDonald states that he never saw, never heard of or saw any thing of the kind and never did state any such thing to Mr. Randall; at least that he would swear that to the best of his recollection he never made any statement of the sort.

Mr. *Hornor*, M. P. P., called in by Mr. Randall.

Says that he heard Mr. Randall say four years ago that Mr. McDonald had made the statement respecting the advertisement mentioned above; but he never heard Mr. McDonald say so.

Tuesday, Feb. 26, 1828.

Committee met again—

PRESENT:

Messrs. Beardsley, Chairman,
Rolph, and
Attorney General.

Mr. Justice *Sherwood* attended at the request of the Committee, and being examined in presence of the Petitioner, states he has been at the Falls on the Ottawa River; knows No. 40 in Nepean; it was sold at Sheriff's sale, at the suit of Mr. H. Boulton; Capt. LeBreton was purchaser at Sheriff's sale: soon afterwards, thinks within one or two days after, he, Mr. Sherwood became purchaser from him of part: thinks the sale was in December, 1820. On the evening of the sale, as he thinks, Captain LeBreton came to him at Brockville, and stated, that a valuable Lot was to be sold at Sheriff's sale, situate on the Ottawa, where he, LeBreton resided, that he wished to become the purchaser, but was not sure he had sufficient money, as other persons he understood had come in, intending to buy, and he proposed to Mr. Sherwood to join him in purchase, or to lend him money to enable him to buy. He stated to Capt. Le Breton that he was not inclined to buy land at that time, but that he would inquire about the lot in question; that at any rate he would take part of the lot from him if he bought it, or would advance him the purchase money if he would give him security.

Mr. Sherwood was present at the sale, but did not bid. Captain Le Breton bought it; there were other bids, and thinks lands of other persons were sold on the same day by the Sheriff in presence of the same bidders. Thinks between twenty and thirty persons atttended, had seen the Sheriff's advertisement of the sale under Mr. Boulton's execution, before Captain LeBreton came to him, but knew nothing of the particular Lot, and a day or two after the sale, he took from Le Breton a conveyance of half his interest in the lot, (an undivided moiety) and became responsible to the Sheriff for the purchase money, of which Captain LeBreton subsequently paid his half to Mr. Sherwood; the amount bid for the lot was £449, to the best of his recollection.

He does not know that any person united with Captain LeBreton in the purchase at Sheriff's sale, but thinks there was not; a partition was made some months after he took the deed from Captain LeBreton, as tenant in common.

Captain LeBreton has sold part of his moiety, as he thinks, to one Bellows. (He Mr. S.) has not yet sold any part of his portion, except that he made an exchange with Captain LeBreton of a small part after partition was made.

He has laid out the front of his proportion of the Lot into small lots, and Captain LeBreton he has been told, has done the same; has never understood what price Captain LeBreton has put upon his share of the land. An application was made to him, from the Quarter Master General's Office, at the desire, as he understood, of the Commander in Chief, for a purchase of a part of the Lot; this was some time after the sale to him; has understood that a proposal was also made to Captain LeBreton at Quebec, by the Commander in Chief, which, however, did not end in anything satisfactory.

Does not know what price was offered to Captain LeBreton, no specific offer was made to himself.

Considers the Lot valuable from its situation, affording a good landing place at the head of the navigation, and there is a good mill site and perhaps several on the Lot; the land is in

general rough. There is a Town he understands laid out near it called Bytown, and it is probable that that circumstance renders the Lot of less value than it has been supposed to be. When he was last at the lot there were two government storehouses built of logs on the lot, and a small dwelling house near that, kept there as an Inn. Has heard since, that a good house has been built by one Bellows, a Merchant, where he believes an Inn is now kept, and there is also another house in which one Hollister lived, who likewise kept an Inn, and has heard that another house has also been built there; one Firth is living with Berry in the house first spoken of.

To questions put by Mr. Boulton, states that he never understood the sale was intended to be kept secret by the Sheriff: has heard the Sheriff say that he sent advertisements to Nepean and Perth, and to several parts of the District: has no idea that the Sheriff was at all aware of the value of the lot No. 40; he (Mr, S.) knew nothing of it till informed of it by Le Breton.

In 1821, Mr. Randall came to him (Mr. Sherwood,) at York, and spoke to him respecting the sale, saying that he understood the land had been sold, and that he was aware that he, Mr. Sherwood, owned part of it. Mr. Randall appeared to be dissatisfied with the judgment which had been obtained against him, saying that Mr. Boulton had not treated him well; he said that he had no knowledge of the sale till he was told of it during the sitting of the Legislature then in Session, by Mr. Morris or some other person.

At a subsequent Sheriff's sale of Mr. Randall's lands, at the suit of Mr. Clark, he, Mr. Sherwood, bought No. 11 in Nepean on the Rideau; does not recollect the price; it was, he thinks, under £20, nearer ten than twenty; the quantity of land was somewhere about 60 or 70 acres; had this lot been offered to him in 1816 or 1817, he would not have given a dollar an acre for it, but it might have been worth much more.

When he understood a question had been made about the land (No. 40) being properly advertised by the Sheriff, he took pains to inquire; and so far as he can depend on the statement of the Sheriff, his belief is, that the land was as well advertised as Sheriffs' sales usually were then, which was before the passing of the Statute on that head in 1822, and more regularly than they sometimes were in other cases: no fact has come to his knowledge to lead him to think otherwise, but the reverse.

Robert Baldwin, Esquire, a Barrister and Attorney, attended. Recollects the rule of Court under which it is stated the interlocutory judgment in Boulton *vs.* Randall was signed; was a Clerk in his father's office at the time the rule spoken of was caused to be in force; the practice was then agreeable to the rule; whether such practice was consistent with the Statute or not, he could not then judge. Remembers the cause of Sommers *vs.* Pettit, in which his father (W. W. Baldwin, Esquire,) was Attorney for the Plaintiff, and Mr. Boulton for the Defendant: upon reference to his father's docket, he finds that interlocutory judgment was signed under the same rule of Court as in Boulton *vs.* Randall; knows Mr. Boulton exerted himself as much as possible for the Defendant, but the judgment was finally entered on the assessment. That cause was an important one as to value: the judgment was for about £500. The interlocutory judgment in Sommers and Pettit was signed 29th July, 1820: demand of plea was put up in the Crown Office on 26th July, and affidavit fyled that Defendant's place of residence in the Home District, was not known to the deponent. Upon questions put to Mr. Boulton by Mr. Randall Mr. Boulton states, that he was retained by Mr. Randall in Randall *vs.* Phelps, and received five guineas, and that Mr. Justice Boulton claimed £50 for his services rendered to Mr. Randall when he was at the Bar, which formed part of the sum for which the bond was given.

Mr. Randall being asked by Mr. Boulton, whether an account, of which a copy appears published in the Colonial Advocate of June 26, 1825, was not furnished by him to the Printer; and whether he, Mr. Randall did not receive such an account from Mr. Boulton; he says he has no doubt it is so. Being asked as to the services specified in that account, he does not deny they were rendered, and does not remember whether he ever objected or not to any of the charges made.

Mr. Boulton to Mr. Randall.

York, 8*th July*, 1819.

Sir,—From what has occurred, I suppose you do not wish me to advocate your two causes at the next Assizes: if that is the case, I should wish to know it immediately, as it will save me

some trouble. Indeed I am not very anxious to be the advocate of a person who is so very illiberal in his sentiments, because I should expect (from the specimen in your former letter,) that should all my efforts prove of no avail, you would accuse me of not sufficiently exerting myself, and allowing the other side, from improper motives, to obtain undue advantages.

At all events, in order that I may not subject myself in future to the like treatment and similar observations, I shall expect the fee with my brief, to be advanced, which will preclude all misunderstandings.

If possible to be procured, you should have the original note upon which the judgment in Mr. Clark's suit was obtained. You had better write to some of your friends in Montreal, to apply to the officer of the Court for it, who perhaps will give it up.

Your obedient servant,

H. J. BOULTON.

To Robert Randall, Chippawa.

York, *May 24th*, 1819.

Sir,—I received your most extraordinary letter of the 17th instant, by Mr. Smith, which if there is any meaning at all to be given to it, is a very impertinent one, and such a one as I will not permit you or any other client to write to me with impunity. I would have you to understand, that I am not rendering you any professional assistance from what you may fancy popular reasons, and therefore any further than my duty to my client prompts me, I do not care a farthing about you. You gave me what I expected at the time, to be a security for £100; half for my own benefit, and the other for my father's. This security I find not worth half a dollar per acre, as there are no inhabitants in the Township. In addition to which, I have your note for £25 due on the first of this month, both of which sums, with interest, amount to nearly £140, and the security I have, independent of your personal responsibility, is not sufficient to guarantee the payment of one half that sum: and as I am not looking to the result of your business, as you call it, for my payment, I insist upon having the money, long due to me for services already performed, paid or secured in a sufficient manner. Were you unable to do either, I should not perhaps expect or wish it, but in proportion as you oppose giving me what I have a right to, so in proportion shall I insist on it, as you can have no honorable or just reason for withholding it. If you will pay me down £50, so as to lessen the burthen upon the land, I will accept it, and let the remainder stand as it does. I return the cognovit for your signature, and patiently wait the return of the post. Mr. Jarvis, I fancy, will hand you this, who will give you a receipt for any money you may pay him. You may be certain I shall not retract one farthing.

Your obedient servant,

H. J. BOULTON.

Mr. Randall, Chippawa.

Charles Fothergill, *vs.* Peter Bice, of the District of Newcastle.

13*th July*, 1819.—Appearance entered, per Statute 60 Geo. III.
13*th July*, do.—Affidavit of non residence of debt fyled with a demand of plea.
17*th July*, 1819.—Interlocutory Judgment fyled.

GEORGE S. BOULTON,
for Plaintiff.

Absalom Sommers *vs.* Thomas Pettit.

19*th July*, 1820.—Appearance per Statute, entered by Plaintiff for debt.

26th July, 1820.—Affidavit of non residence sworn, and demand of plea put up in the office.

29th July, do.—Interlocutory Judgment signed, for want of a plea.

Michaelmas Term.—Motion for new trial on payment of costs refused.

Verdict £490.

W. W. BALDWIN,
for Plaintiff.

Heron *vs.* Dewitt.

10th January, 1820.—Appearance per Statute.

25th January, do.—Demand of plea put up in the office.

Affidavit of non residence allowed in bill of costs.

31st January, do.—Interlocutory Judgment signed.

Notice of assessment of damages put up in the office.

W. W. BALDWIN,
for said Plaintiff.

Adam L. McNider and John Forsyth *vs.* John Clark, do. debt on bond, £150.

JOHN B. ROBINSON,
for Plaintiff.

16th January, 1821.—Appearance per Statute.

22nd January, do.—Interlocutory Judgment upon an affidavit of non-residence, and demand of plea, as appears by the bill of costs.

24th March, 1821.—Final Judgment signed without any rule to refer bond to the master or assessment of damages.

I certify the above proceedings to be correct, as appears by the papers now in the Crown Office.

JAMES E. SMALL,
Deputy Clerk of the Crown.

I certify that the broken Lots, Nos. 10 and 11, in the 1st Concession on the River Rideau, in the Township of Nepean, were given in the grant to Robert Randall, Esquire, containing 100 acres. By the plan, they appear to contain somewhat more, that is to say, the broken Lot, No. 10, about 50, and the broken Lot No. 11, about 78 acres.

THOMAS RIDOUT,
Surveyor General.

Surveyor General's Office, York,
14th February, 1828.

To whom it may concern.

I Robert Randall, of the Township of Stamford, do swear that I truly and bona fide have such a freehold estate situated in the following places:—the place known by the Bridgewater Works in the waters of the Niagara River, between the mouth of the River Welland and the Great Falls in the Township of Stamford, District of Niagara; four frame dwelling houses, under two stories, with not more than two fire places; twelve hundred acres of land, being the

North part of the Lots Nos. 15, 16, 17, 18, 19, and 20 on the South side of the River Welland in the Township of Wainfleet, District of Niagara; compensation allowance for the destruction of the Bridgewater Works in the late war with the United States of America, detained in the hands of this Government by my order, (four thousand pounds); seven hundred and twenty six acres of land, Lots Nos. 38, 39, and 40 in the first Concession from the Grand or Ottawa River, and the broken fronts of said Lots, in the Township of Nepean, in the County of Carleton, District of Bathurst; 450 acres of land, broken Lots Nos. 10 and 11 in the 1st Concession; Lot No. 11, and the Eastermost or front three fourths of Lot No. 10, in the 2nd Concession, upon the River Rideau, Township of Nepean, County of Carleton, District of Bathurst; 400 acres of land, Lots Nos. 11 and 12 in the 8th Concession of the Township of Matilda in the County of Dundas, Eastern District, 400 acres of Land, Lots Nos. 10 and 11 in the 6th Concession of the Township of Young, County of Leeds, District of Johnstown, over and above all incumbrances that may effect the same; and am otherwise qualified according to the provisions of the law to be elected and returned a member of the Commons House of Assembly, according to the tenor and true meaning of the Act of Parliament in that behalf; and that I have not obtained the same fraudulently for the purpose of enabling me to be returned Member to the Commons House of Assembly. So help my God.

(Signed,) ROBERT RANDALL.

Sworn before me at Stamford, in the County of Lincoln, in the District of Niagara, this 26th day of July, 1824.

(Signed,) RICHARD LEONARD,
Returning Officer, District of Niagara.

I, Richard Leonard, Esq., Returning Officer for the County of Lincoln, in the District aforesaid, do certify, that on the 26th day of July inst., Robert Randall, of the Township of St mford, did duly make and subscribe before me, Returning Officer as aforesaid, the within written oath of eligibility.

Given under my hand at Stamford, 31st day of July, 1824.

(Signed,) RICHARD LEONARD,
Returning Officer.

I certify that the foregoing are true copies of the oath of eligibility of Robert Randall, Esq., and of the certificate of Richard Leonard, Esq., the Returning Officer now fyled of record in the Crown Office.

In testimony whereof I have hereto set my hand and affixed my seal of office, this 8th day of February, in the year of our Lord, 1828.

JAMES E. SMALL,
Deputy Clerk of the Crown.

Know all men, by these presents, that I, Robert Randall, of the Township of Stamford, in the District of Niagara, gentleman, am held and firmly bound to Henry John Boulton, of the Town of York, in the Home District, Esq., in two hundred pounds of lawful money of Upper Canada, to be paid to the said Henry John Boulton, or his certain attorneys, executors, administrators or assigns, for which payment, to be well and truly made, I bind myself, my heirs, executors and administrators, firmly by these presents, sealed with my seal, and dated the seventh day of July, in the year of our Lord, one thousand eight hundred and eighteen.

Whereas, by an indenture bearing date the 17th March, 1817, the said Robert Randall mortgaged unto the said Henry John Boulton, all that parcel or tract of land, situated, lying and being in the Township of Nepean, in the District of Johnstown, containing, by admeasurement, 200 acres, more or less, being Lot number 11, in the 1st Concession, (on the Ri-

deau) of the said Township of Nepean, which is more particularly described in the original grant from the Crown, of the said parcel or tract of land, to the said Robert Randall, and which said indenture of mortgage is meant as a security for the due payment of the sum of £100 of lawful money of Upper Canada, by the said Robert Randall, to the said Henry John Boulton, with lawful interest from the date hereof, and, whereas in the said indenture of mortgage, there is not contained any covenant for the due payment of the said sum of £100, as aforesaid, according to the true intent and meaning of the said parties, now the condition of this obligation is such, that if the above bounden Robert Randall, his heirs, executors, or administrators, do and shall, well and truly, pay or cause to be paid unto the above named Henry John Boulton, his heirs, executors, or administrators, the full sum of £100, of lawful money aforesaid, with lawful interest for the same, from the 17th March, 1817, on the 1st day of January, next ensuing the date of the above written obligation, then this obligation shall be void, otherwise the same shall remain in full force.

ROBERT RANDALL,

Sealed and delivered in the presence of

JAMES BOULTON.
G. S. BOULTON.

(*Copy of the Promisory Note.*)

For value received I promise to pay Henry John Boulton, Esq. or order, the sum of twenty-five pounds seventeenth October, 1818—payable 1st May next,

R. RANDALL.

I certify that the preceding paper writing contains true copies of a bond and a promissory note, fyled of record in the Crown Office, in the cause of Henry J. Boulton, Esquire, against Robert Randall.

In testimony whereof, I have hereto set my Hand and affixed my Seal of Office, this seventh day of February, 1828.

JAMES E. SMALL
Deputy Clerk of the Crown.

No. 8.

A list of property on which Robert Randall declares his eligibility as a Candidate to be returned to the Commons House of Assembly as a Representative.

The place known as Bridgewater Works, on the waters of the Niagara River, between the mouth of the River Welland and the great Falls, in the Township of Stamford, district of Niagara.

4 Frame dwelling houses under two stories, with not more than two fire-places each £35.....£ 140

1,200 Acres of land, being the north part of the Lots, Numbers 15, 16, 17, 18, 19 and 20, on the south side of the river Welland, in the Township of Wainfleet, District of Niagara..... 240

Compensation allowed for the destruction of the Bridgewater Works in the late War with the United States of America, detained in the hands of this Government by my order.....£4,000

776 acres of land, Lots No. 38, 39 and 40, in the 1st Concession from the Grand or Ottawa River, and the broken fronts of said Lots in the Township of Nepean, County of Carleton, District of Bathurst..... 155

450 acres of land, broken Lots, No. 10 and 11, 1st Concession Lot No. 11, and the Easternmost or front three-fourths of Lot No. 10, in the second concession upon the River Rideau, Township of Nepean, County of Carleton, District of Bathurst... ..	90
400 acres of land, Lots No. 11 and 12, in the eighth Concession of the Township of Matilda, County of Dundas, Eastern District.....	80
400 acres of land, Lots No. 10 and 11, sixth Concession of the Township of Yonge, County of Leeds, District of Johnstown.....	80
Total, 3226 acres assessable property—amount of rates, ...	£786

ROBERT RANDALL.

Chippawa, July 26th, 1824.

I certify that the paper writing marked No. 1, hereto annexed, is a correct statement of the proceedings in the cause wherein Henry John Boulton, Esquire, is Plaintiff, and Robert Randall, Esquire, is Defendant; and also that the paper writing marked No. 2, also hereto annexed, contains true copies of the appearance paper, affidavit of non-residence, and demand of plea—and the interlocutory judgment paper, with their several indorsements fyled of record in the Crown Office in the abovesaid cause.

In testimony whereof, I have hereto set my Hand and affixed my Seal of Office, this first day of August, in the Year of Our Lord one thousand eight hundred and twenty-eight.

JAMES E. SMALL, [G. R.]
Deputy Clerk of the Crown.

No. 1.

In the King's Bench.

Henry John Boulton, Plaintiff, } This action was commenced by a Writ of Summons
vs. } in a plea of debt, issued from the Crown Office at York,
Robert Randall, Defendant. } in the Home District, on the thirty-first day of May, 1819, returnable the first day of Trinity Term, 1819, being the fifth day of July of that year. This summons, with the declaration annexed, was fyled in the said Crown Office on the 13th day of July, 1819, with an affidavit made by Samuel P. Jarvis, before Thomas Dickson, on the 24th day of June, 1819, stating that the same was served on the Defendant by the Deponent, on the 22nd day of June, of the same year. On the said 13th day of June, 1819, an appearance for said Defendant in said cause was entered in said office by said Plaintiff, and on the same day an affidavit made, on the 13th day of July, 1819, before John Small, Clerk of the Crown, by the present Honorable James B. Macaulay, then a student at law with the said Henry John Boulton, stating that the place of residence of the Defendant, in the Home District, was unknown to the Deponent, and also a demand of plea were fyled in the Crown Office. On the 17th day of July, 1819, interlocutory judgment was sighed, and final judgment entered for two hundred and twenty-five pounds debt, and five pounds three shillings and eight pence damages and costs, amounting altogether to the sum of two hundred and thirty pounds. On the fifth of October, 1819, a Writ of *fieri facias*, against the goods and chattels of the Defendant was issued upon a præcipe fyled by the Plaintiff, directed to the Sheriff of the Home District, returnable on the first day of Michælmas Term following, being the first day of November, 1819. This execution, with a return of *nulla bona*, by the Sheriff of the Home District, was fyled in the said Crown Office on the return day, and on the same day a Writ of *fieri facias* against the Defendant's lands and tenements was issued, (upon a præcipe fyled by the Plaintiff,) directed to the Sheriff of the Johnstown District, and returnable the last day of Michælmas Term, 1820, which Writ was fyled in the said office, on the 17th day of March, 1825, with the following return by the Sheriff of the Johnstown District

By virtue of the Writ to me directed, I have caused to be made by the public sale of the lands and tenements of the within named Defendant, Robert Randall, that is to say, Lot number forty, in the first Concession of Nepean, in the Johnstown District, together with its broken front, in front thereof, on the Ottawa or Grand River, the debt and damages therein mentioned, which I have ready before the Lord the King, to be rendered to the said Henry John Boulton, for his debt and damages aforesaid, as within I am commanded.

(Signed,) JOHN STUART,
Sheriff, District of Johnstown.

No. 2.

In the King's Bench.

Trinity 59 Geo. III.

Henry J. Boulton one, &c. *vs.* *Robert Randall.* } The Plaintiff appears for the Defendant in this case according to the Statute.

H. J. BOULTON,
In person.

Indorsed on the above.

In B. R.
Boulton, *vs.* *Randall.* } Appeared.
Fyled 13th July, 1819.

J. SMALL, *C. C.*
H. J. BOULTON.

In the King's Bench.

Trinity Term, 59, Geo. III.

H. J. Boulton, one, &c. *vs.* *Robert Randall.* } The Plaintiff demands a plea in the cause from the Defendant by

Yours, &c.,

H. J. BOULTON,
Plaintiff in person.

To *Robert Randall,*
The above Defendant.

James B. Macaulay, of the Town of York, gentleman, maketh oath and saith, that the above named Defendant, Robert Randall's place of residence, in the Home District, is not known to this Deponent.

J. B. MACAULAY.

Sworn before me this 13th day of July, 1819. J. SMALL,
Clerk of the Crown.

Entered 13th July, 1819. J. SMALL.

Indorsement on the above.

H. J. Boulton, }
Robert Randall. }
Affidavit of non residence and demand of plea fyled 13th July, 1819.

J. SMALL, *C. C.*
H. J. BOULTON.

IN THE KING'S BENCH.

Trinity Term, 59 Geo. III.

Henry John Boulton, }
vs, } The Plaintiff signs Judgment in this cause by default for want of a plea.
Robert Randall. }

H. J. BOULTON,
Plaintiff.

17th July, 1819.

Indorsed on above.

In B. R.

Trinity Term, 59, Geo. III.

H. J. Boulton }
vs. }
Robert Randall. }
Interlocutory Judgment fyled 17th July, 1819.

J. SMALL, *C. C.*
H. J. BOULTON,
Plaintiff in person.

No. 10.

Upper Canada, }
Home Distric } George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith.
To wit: }

To the Sheriff of the Home District, greeting:

(L. S.) We command you that you cause to be levied of the goods and chattels in your District, of Robert Randall, as well a certain debt of two hundred and twenty-five pounds, which Henry John Boulton lately in our Court before us at York, recovered against him, as also five pounds three shillings and eight pence, which in our same Court before us were awarded to the said Henry John Boulton, for his damages which he had sustained, as well by occasion of the detaining the said debt, as for his costs and charges by him laid out about his suit on that behalf, whereof the said Robert Randall convicted as appears to us of record, and have you that money before us at York, on the first day of Michaelmas Term next, to render to the said Henry John Boulton, for his debt and damages aforesaid, and have there and then this Writ. Witness the Honourable William Dummer Powell, C. J., the seventeenth day of July, in the fifty-ninth year of our Reign.

JOHN SMALL,
Clerk of the Crown.

H. J. BOULTON,
In person.

Indorsement on the above.

H. J. Boulton,
vs.
Robert Randall,
Fi. Fa.
Return and fyled 1st Nov. 1819.

Nulla Bona.
The answer of
SAMUEL RIDOUT,
Sheriff.

J. SMALL, C. C.

Upper Canada, Home District, &c. } George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith.

(L. S.) To the Sheriff of the Johnstown District,

Greeting:—

Whereas we lately commanded our Sheriff of the Home District, that of the goods and chattels of Robert Randall in his District, he should cause to be made as well a certain debt of two hundred and twenty five pounds which Henry John Boulton lately in our Court before us at York recovered against him, as also five pounds three shillings and eight pence which in our said Court before us were awarded to the said Henry John Boulton for his damages which he had sustained, as well by occasion of the detaining the said debt, as for his costs and charges by him laid out about his suit in that behalf, whereof the said Robert Randall was convicted as appeared to us of record, and that he should have that money before us at York, on the first day of Michaelmas Term then next, to render to the said Henry John Boulton for his debt and damages aforesaid. And that he should have then there that writ: And our said Sheriff of the Home District at that day returned to us that the said Robert Randall had not any goods or chattels in his District whereof he could cause to be made the debt and damages aforesaid, or any part thereof, whereupon, on the behalf of the said Henry John Boulton, it is sufficiently testified in our said Court before us that the said Robert Randall hath sufficient lands and tenements in your District whereof you may cause to be made the debt and damages aforesaid and every part thereof, therefore we commend you that of the lands and tenements of the said Robert Randall in your District, you cause to be made the said debt of two hundred and twenty five pounds and the said five pounds three shillings and eight pence the damages aforesaid, and that you have that money before us at York on the last return day of Michaelmas Term next, to render to the said Henry John Boulton for his debt and damages aforesaid, and have then there this writ.

Witness the Honorable William Dummer Powell, Chief Justice, at York, this first day of November in the Sixtieth Year of our Reign.

JOHN SMALL,
Clerk of the Crown.

H. J. Boulton,
In person.

Indorsements on the above.

By virtue of this writ to me directed, I have caused to be made by the public sale of the lands and tenements of the within named Defendant, Robert Randall, that is to say, Lot number forty in the first concession of Nepean, in the Johnstown District, together with the broken front thereof on the Ottawa or Grand River, the debt and damages within mentioned, which I have ready before the Lord the King to be rendered to the said Henry John Boulton for his debt and damages aforesaid, as within I am commanded.

JOHM STUART, Sheriff
District Johnstown.

Levy one hundred and fifty-five pounds six shillings and four pence, together with execution, Sheriff's poundage, and all other expenses.

H. J. BOULTON,
Plaintiff.

	£155	6	4
fi. fa.	0	18	6
	£156	4	10

Received the amount of the within fi. fa. and my fees in full.

JOHN STUART, Sheriff,
District Johnstown.

Boulton vs. *Randall*—fi. fa:
Lands and Tenements,
Fyled and returned 17th March, 1825.

J. SMALL, C. C.

Received the 13th Nov. 1819.

JOHN STUART, Sheriff,
Johnstown District.

2 Deeds	£2	6	8
Poundage	3	4	0
Returning Writ	0	3	8
	£5	13	4

I certify that the foregoing are true copies of the fieri facias against the goods and chattels of Robert Randall, Esq., and also of the fieri facias against the lands and tenements of the said Robert Randall, Esq. with the several indorsements thereon, at the suit of Henry John Boulton, now filed of record in the Crown Office.

In testimony whereof I have hereunto set my hand and affixed my seal of office, the ninth day of August, one thousand-eight hundred and twenty eight, and in the ninth year of His Majesty's Reign.

CHARLES C. SMALL, G. R.

No. 11.

Sheriff's return on a writ of fi. fa. against the lands of Robert Randall, Esq., at the suit of Thomas Clark.

Issued 15th February, 1821—returned and fyled in the Crown Office—17th March, 1825.

By virtue of the within writ, I seized and took into my hands and possession on the first day of April, 1821, the lands and tenements of the within named Robert Randall, in Nepean and Yonge, in the District of Johnstown, and have exposed a part of that to public sale, and have sold a part thereof at such sale to the value of £32 10, and the residue of said lands and tenements still remain in my hands for want of buyers.

JOHN STUART, Sheriff,
District Johnstown.

Levy indorsed on writ, £484 4 10, besides Sheriff's fees, &c.

Sheriff's return on a writ of fi. fa. against the lands of Robert Randall, Esq., at the suit of Thomas Clark, Esq., issued 17th January, 1830, and fyled in the Crown Office, 7th Sept., 1825.

By virtue of the writ hereunto annexed, I have caused to be made of the lands and tenements of the within named Robert Randall, the sum of thirty-three pounds eleven shillings and four pence, which money I have ready before the Lord the King at the day and place within contained, to render to the within named Thomas Clark, in part of his damage within mentioned, and I further certify that the said Robert Randall has not any other or more lands and tenements in my District, whereof I can cause to be made the residue of the damages aforesaid.

The answer of

RICHARD LEONARD,
Sheriff.

PETER T. PAWLING,
Deputy Sheriff.

No. 12.

Whereas Robert Randall has by Petition, complained that he has suffered great loss and injustice under a Judgment obtained against him in the Court of King's Bench, in this Province, by Henry John Boulton, Esquire, His Majesty's Solicitor General, which Judgment the Petitioner alleges was obtained against the rules of law and equity; and whereas adequate relief cannot be afforded by the said Court of King's Bench, and it is therefore expedient that an inquiry should be made into the wrongs alleged, and right be caused to be done, if upon due inquiry under oath it shall be made to appear that such great injustice has been done. Be it therefore enacted by the King's Most Excellent Majesty, &c., that it shall and may be lawful for the Honorable John Walpole Willis, one of His Majesty's Justices of the Court of King's Bench, in and for the Province of Upper Canada, under and by virtue of this Act at York in the Home District, to inquire into the truth of the statements in the said Petition set forth, and for the purpose of that inquiry, it shall and may be lawful for the said Honorable John Walpole Willis, in the presence of the parties or their Attorneys, or such of them as shall after due notice appear, to summon and examine upon oath all witnesses deemed necessary for the attainment of justice between the parties, and to enable the said Honorable John Walpole Willis to inform his Judgment in making his decree or decrees as hereinafter mentioned, and any person convicted of wilful false swearing before the said Honorable John Walpole Willis under this Act, shall be liable to the same punishment as is now inflicted by the laws of this Province upon persons guilty of perjury.

And be it &c., That the aforesaid matter shall be heard and determined, and the witnesses examined in an open Court, whereinto all His Majesty's subjects shall have free access. Provided always, that it shall and may be lawful for the said Honorable John Walpole Willis to commit any person for a contempt of the Court for a period not exceeding one month, and to fine such person a sum not exceeding fifty pounds.

And be it &c., That it shall and may be lawful for the said Honorable John Walpole Willis, having heard the said Petitioner and the said Henry John Boulton, and such other persons as he the said Honorable John Walpole Willis shall summon, or such of them as shall appear after due notice, to make such decree or decrees for either the confirmation or the reversal of the said judgment and of the proceedings had thereupon, and of any sales of land heretofore made under and by virtue of the said judgment as he, the said Honorable John Walpole Willis, shall deem necessary for the doing of justice between all parties interested in the matter.

And be it &c., That any decree made by the said Honorable John Walpole Willis, under and by virtue of this Act, shall be obligatory and binding upon the person against whom or in whose favor the same shall be made, and if any person against whom or in whose favor any decree shall be made, shall neglect or refuse to comply therewith, it shall and may be lawful for any person interested in such decree to have the same registered, which decree so registered shall have the same virtue and effect as if the said decree had been literally obeyed.

And be it further enacted, &c., That every decree made by the said Honorable John Walpole Willis, shall be under his hand and seal, attested by two witnesses, and made on or before the first day of January, 1829.

And be it further enacted, &c., That upon the production of any decree aforesaid, and a copy thereof to the Register of any County or Riding in this Province, in whose County or Riding the land in the said decree mentioned shall lie, and upon an affidavit made before such Register or his Deputy, or any Commissioner of the King's Bench for taking affidavits, of the due execution of the said decree or decrees before such Register, it shall and may be lawful for him to register the said decree in his office, and to fyle a copy thereof, and for such registry and fyling to demand and receive the sum of one pound.

And be it further enacted, &c., That it shall and may be lawful for the said Honorable John Walpole Willis to award against either of the parties such costs and charges as he shall deem right and just, and for the recovery of which costs and charges so awarded, it shall and may be lawful for the party interested to proceed by action of debt in any Court of Record in this Province.

YEAS—Beardsley, Beasley, Clark, Fothergill, Hamilton, Horner, McBride, McCall, Perry, Thompson of York, Thompson of Frontenac, Walsh, Wilkinson, and Wilson,—14.

NAYS—Messrs. Attorney General, Burnham, Cameron, Coleman, D. Jones, J. Jones, McDonnell of Prescott and Russel, McDonell of Glengary, McLean, Morris, Scollick and Vankoughnet,—12.

YORK, 19*th July*, 1829.

SIR,—An action of ejectment is brought by Mr. Sherwood against one Firth, who is in possession of part of the Lot at Point Nepean, on the Ottawa River, which you complain has been illegally sold under an execution against you. I am defending the action, and have instructed Mr. Radenhurst of Perth, to manage the defence at the trial. If the sale was illegal, for any cause stated by you, and more particularly for want of being fairly advertised, you have now an opportunity to take the opinion of the Court upon it, by enabling Firth to urge that objection against the Plaintiff's title.

The Assizes for Perth commence on the 18th August. Any evidence you can furnish on the subject, or any professional assistance which you may desire to engage, Mr. Radenhurst will willingly avail himself of.

I am, Sir,
Your obedient servant,

JOHN B. ROBINSON.

Robert Randall, Esquire.

No. 14.

PERTH, 23*rd August*, 1828.

ROBERT RANDALL, Esquire.

DEAR SIR,—I received your several letters with the documents enclosed, respecting the suit of Doe d. dem Sherwood *vs.* Frith and Berrie, for part of the land formerly your property at Nepean Point. Many of the papers you sent were entirely useless, as the Judge would not permit evidence to shew how the judgment in Boulton's suit was obtained. Nor could I, in addressing the Jury (as you wished,) allude to that circumstance, but was entirely confined to what was put in evidence by the Plaintiff, viz: the judgment, executions and sale, and even in this I was once or twice interrupted by the opposite Counsel, and censured by the Court, for what they considered exceeding my bounds.

I objected, as you requested I should, to the trial proceeding at all, which the Judge paid no attention to, as he considered it was casting a censure on the conduct of the Court of King's Bench, which he could not listen to. The Plaintiff did not produce any notice of the sale whatever, nor show that any such was given previous to the sale taking place. Upon this and some other points, I moved for a non suit, and the Judge reserved the points. We were also anxious to shew that Colonel By required the property for the Government use, for the purposes of the Rideau Canal; this evidence the Judge refused receiving. In fact, he seemed unwilling that any point that could operate in yours or the tenants' favour should go to the Jury; and as the Jury at that Assize were persons little acquainted with their duty or with Courts of Law, they implicitly followed the directions of the Court, which in this case was for the Plaintiff, and gave a verdict accordingly.

I remain,
Your obedient servant,

THOS. RADENHURST.

No. 15.

TOWN OF SHERWOOD.

In consequence of the decision of the Court of King's Bench, held at Perth, on the 20th instant, proving the subscriber's indisputable title to that valuable tract of land, in the Township of Nepean, formerly known by the name of the Richmond Landing (at present the town of Sherwood) and adjoining to Bytown. Reports, prejudicial to the title of said land, having been maliciously circulated by a personage of high rank and reponsibility, have heretofore prevented the subscriber from disposing of said land. The situation is most beautiful and salubrious, being on the south side of the Chaudière Falls, with the Grand Union Bridge abutting on the centre of the front and leading through the main street. It is replete with mill sites, and for commerce no situation on the River Ottawa can equal it. The subscriber is determined as much as possible to confine his sales to persons of respectability.

JOHN LEBRETON.

Britannia, Ottawa River,
26th August, 1828.

UNION HOTEL,

CHAUDIERE, UPPER BYTOWN.

Firth and Berrie beg to make their most grateful acknowledgments for the very liberal patronage and support they have received from their friends and the public, for the long period of nine years, of which it will be their earnest study to merit a continuation, by contributing to the utmost of their means and power, to the comfort and accommodation of those who favor them with their countenance and support.

The romantic and highly picturesque situation of the Union Hotel, which commands a most interesting view of the mountains and scenery in the vicinity of Hull—the islands and banks of the noble Ottawa—the magnificent Falls of the Chaudière, over which bridges are now about completed; and the works and improvements in Upper Bytown will render this place a delightful retreat either to the delicate, invalid, or scientific tourist.

The accommodations will be of a superior kind; the table will be furnished with the choicest viands that the season and the situation of the country will afford, and the wines and liquors will be of the best quality that can be procured, either at Bytown or from the most respectable dealers in Montreal.

Bytown, 1st September, 1828.

No. 16.

Lot No, 40, in the first concession of the Township of Nepean, with its broken front was sold by Sheriff's sale, on the eleventh day of December, 1820, at the suit of Henry John Boulton, Esq., and purchased by John LeBreton, Esq., for the sum of £449 currency.

A. M'MILLAN,
Deputy Register.

No. 17.

The Lots Nos. 38 and 40 on the Ottawa, and No. 10 on the River Rideau, were all sold by the Sheriff's order in the Court House, Brockville, and purchased by L. P. Sherwood, Esq.

R. SHERWOOD.

PLAN.

Please call on Captain Collins, near the mouth of the *Jock*, on the Rideau, and he will shew Major Randall the front of Lot Nos. 10 and 11 drawn by him.

R. S.

Major Patten,
Register Office, Prescott.

No. 18.

REGISTER OFFICE FOR THE COUNTIES OF LEEDS, GRENVILLE AND CARLETON.

ELIZABETHTOWN, *5th February*, 1811.

I hereby certify that no memorial of any deed, conveyance, or other incumbrance from Robert Randall, to any person whatever, appears registered in the Books of this office affecting the following parcels of land, that is to say, Lots Nos. 10 and 11 in the sixth concession of Yonge, broken Lots, Nos. 10 and 11, in the first concession of Nepean, Lot No. 11 in the second, and the easternmost, or front, three-fourths of Lot No. 10 in the second concession of Nepean.

LEVIUS P. SHERWOOD.
Register.

No. 19.

(Copy.)

CORNWALL, *8th October*, 1807.

DEAR SIR,—I enclose you two petitions, one for two hundred acres of land, agreeable to the regulation of the Province, providing for settlers; also one for a lease of Lot No. 39, in the first concession (or) front of the Ottawa River, opposite to the Falls, known by the name of the Chaudière, in the Township of Nepean, a short distance above the mouth of the River Rideau. The petition for two hundred acres, as a settler, I have left a blank for you to fill up, agreeable to the instructions hereby given. If No. 39 is a reserved Lot, as I presume it is, and if there be a broken front, which I also think there is, and likewise a broken front to Lot No. 38, lying adjoining No. 39, on the upper side, and should there also be a broken front on No. 40, adjoining No. 39 on the lower side—provided those fronts will be sufficient to fill my claim for two hundred acres, you will please to lay my petition upon the said broken fronts, comprehending all water privileges as far as the channel of the Ottawa or Grand River, including all lands between the channel of said River and the banks of the main, from the west line of Lot No. 39, running ten chains below the East line of Lot No. 40.

This, Sir, requires an explanation. There are four small islands at or near the Chaudière Falls, which lay so situated as to make them actually necessary to be procured for the purpose I have in view, which is to extend a dam, from the main bank to the upper islands, lying at the Falls, and taking the water between the main and said islands, for the purpose of a grist and saw mill. The Ottawa River is very narrow at the Chaudière Falls, therefore you will find the distance to be but short, from the main to the channel of the river, and the quantity of acres which those islands contain cannot exceed 20, but government not having it in their power to grant islands, makes it necessary to apply in this way, as government can make a grant in this way that will be as effectual as if the islands were expressed in the deeds, but should the broken fronts of Lots Nos. 38, 39 and 40 not be sufficient to fill my claim, you will please to lay the claim upon the broken front, let there be what quantity there may, and let my petition lay open for the deficiency to be laid in some other place. Provided that Lot

No. 39 should not be reserved for the clergy, and that Lots Nos. 38 and 40 should not be granted; please to lay my claim upon as much of the fronts as the same will cover, comprehending the privileges of the waters of the river, and bound by the channel of said river as already described, provided there should not be broken fronts to the aforesaid Lots, and that 38 and 40 have already been granted, and should No. 39 be reserved for the benefit of the Crown, endeavor to prevail on government to allow my claim to cover it; with the privilege of said waters and islands as described. But should Government not allow my claim to cover No. 39, and should the said Nos. 38 and 40 be already granted, as likewise there may not be any broken fronts; in that case take out a lease for me for No. 39, and endeavor to get a grant from the bank of the west line of No. 39, running to the channel of the river, ten chains below the east line of Lot No. 40, to the main bank including all lands, which is those small islands. I have enclosed my bond together with my bondsmen, for the annual payment of the lease; you will also call upon Captain Farquharson for my letter directed to Thomas B. Gauf, Esquire, who Mr. Chewitt says, was at New York, and had not returned when he left home. You will get Captain Farquharson to open my letter favored by Mr. Burns to Mr. Gauf, in order that you may get my certificate as having taken the oaths required by Government. Should Captain Farquharson not be in possession of my letter to Mr. Gauf, please to call on Mr. Burns, (I think his christian name is William,) I had the pleasure to see him at Cornwall on his way from Quebec to York, on the 8th July last. I enclose you a guinea, and, as I am informed that most of the landed business sent to your care is conducted through the different offices by your son, and further reasonable charge he may make shall be cheerfully paid by a draft at sight, or otherwise, in favor of any person in Cornwall. As Government is knowing to my arduous undertaking at the Bridgewater Works, near the Falls of Niagara, and my perseverance in this kind of business, I flatter myself the Governor in Council will be disposed to encourage me all in their power in commencing business at the Chaudière Falls, on the Ottawa River; it will be the means of settling the wild lands on that River, that is at this present a perfect wilderness, not one settler inhabiting the country; it will be the means of settling the lands upon that line of the Province, which I conceive to be much required. The fees required in getting out my patent, if in your power to procure one, I shall pay to your order in Cornwall on demand. You will greatly oblige me to hasten the business as much as in your power, and forward the deed and lease by the first safe opportunity that may offer, as I am very anxious to get out my timber and build my dam before the freezing of the waters.

I fully expected my letter would have found my friend, Mr. Gauf, in York, on Mr. Burnes' arrival, and expected at all events to have heard from my business by you when last down at Cornwall Court, at my return from Quebec. The acquaintance which I have had the honor to have with you, makes me trust you will use your interest for me. You can observe to the Governor, that the Parish of Cornwall must also feel itself under a small compliment, for having built the Church.

Relying upon your usual goodness,
I subscribe myself,
Your most obedient and humble servant,

(Signed,) ROBERT RANDALL.

D'Arcy Boulton, Esquire.

No. 20.

Dear Sir,—I enclose you a draft drawn by Mr. Chewitt, on the Receiver General at York, for £2 9s. 6d., Halifax Currency, which you will please to apply towards the payment of the fees, should a grant for 200 acres of land be made to me by Government; but should Mr. Gauf have returned from New York, and has laid my memorial before the Governor in Council, you will please to give the enclosed draft to him for the aforesaid purpose. Mr. Chewitt leaves this place much later than I expected. Should my business be done through you or Mr. Gauf, you will be very obliging by writing me immediately what Government is

likely to do; but should you obtain the lease and grant, I will acknowledge it a great favor to have them sent to me as quick as possible, as I am very desirous to build a house at the place before the winter sets in, in order that I may be preparing timber, and making necessary arrangements for my works.

I am, Sir,
With great respect,
Your humble servant,

(Signed,) ROBERT RANDALL.

D'Arcy Boulton, Esquire.

P. S. Should 38 and 40 be granted, please for to write me in whose name they are granted.

No. 21.

York, *July 2nd*, 1808.

Dear Sir,—I am sorry to inform you that Lots Nos. 38 and 40, first Concession, on the Ottawa, were both taken up. No. 40 by Epr. Jones, Esquire, and 38 by Mrs. Jessup, four or five years ago. No. 39 is a reserve, and you are the first applicant. I this day endeavored to get it through the Council; but when it was referred to the Surveyor General to report what sort of timber was on it, they would not say, so you will be so good as to get some respectable man to look at the land and make oath before a Magistrate what the timber is, or get a Magistrate to certify it.

We wrote you before, but we supposed the letter miscarried, now we resume our old one.

I have the honor to be,
Sir,
Your most obedient servant,

H. J. BOULTON.

I suppose you do not wish now to have your Petition presented, as cannot get the Lots you wished. My father is of opinion you may run your dam across to the Island without any apprehension of being disturbed.

H. J. B.

No. 22.

Cornwall, *July 23rd*, 1808.

Sir,—I received a letter from your son, H. Boulton, dated July 2nd, informing me that Lots Nos. 38 and 40, first Concession, on the Ottawa River, in Township of Nepean, are granted, and that some requisites are required before a lease can be taken for No. 39. But his saying nothing respecting the broken fronts adjoining to those numbers, which was the land I wished you to apply for, and to cover them by my claim should they not be granted, makes me suppose you have not understood the tenor of my letter; I have therefore empowered my friend Mr. Rudsdell to act for me, in the business; any assistance you can give him, will greatly oblige me. You will please to furnish him with my writings committed to your care.

I am,
Your humble servant,

ROBERT RANDALL.

D'Arcy Boulton, Esquire.

No. 23.

Mr. Randall's instructions to Mr. Rudsdell, in behalf of the business committed to his care at York.

Mr. Rudsdell will please call at the Executive Council Office as soon as he may arrive at York, and inquire of the Clerks whether a Petition has been laid before the Council in behalf of Robert Randall, for 200 acres of land, agreeable to the regulations providing for settlers, and if so, whether the same has been acted upon, and what the decision was. Should Mr. Rudsdell find there has not been an application made to the Executive Council in behalf of Mr. Randall, in that case, he will hand in the Petition which he holds, to the Clerk of the Council, and beg of the Clerk to immediately lay the Petition before the Council, and when the Council shall have granted the prayer of the Petition, Mr. Rudsdell will please to take the order from the Council Chamber to the Surveyor General's Office, then request the Surveyor General to lay the diagram of the Township of Nepean before him, and examine the broken fronts adjoining Lots Nos. 38, 39, and 40, bounded by the waters of the Grand River at or near the Chaudière Falls, and mark the letter R on the said three broken fronts, then lay the order of Council on the said three broken fronts, producing his power of Attorney to the Executive Council as well as to the Surveyor General, as being legally authorized to act for and in behalf of Mr. Randall. Should the Surveyor General object to his laying the order on the said broken fronts, Mr. Rudsdell will inquire how long it has been since they were granted and in whose name,—should he be answered in the name of Ephraim Jones, the Clergy of Upper Canada and Mrs. Jessup, Mr. Rudsdell in that case will please to call at the office of the Secretary of the Province, and there examine the lines of the grants made of Lots Nos. 38 and 40, and see whether the Government has granted the said broken fronts with the Lots Nos. 38 and 40, but should the said broken fronts be applied for by any other person, Mr. Rudsdell will please to know the date of the application, and if the application has been since the date of Mr. Randall's letter to Mr. Boulton, Mr. Rudsdell will then ascertain why Mr. Boulton has let my Petition lay over to be superseded by another claim, and should he discover that Mr. Boulton may have acted with interested views, he will then remonstrate to the Governor and show my instructions and Petitions committed to the care of Mr. Boulton. Mr. Rudsdell will explain to the Governor the suspense I have been kept in, and my object for wishing my claim to cover the said broken front, and that my views are to erect Water Works, such as Grist and Saw Mills, and a Forge for making Iron; that I have purchased from the Government of Lower Canada, lands opposite to the said broken fronts the distance of four miles, containing an extensive body of the best and richest Iron Ore; and as the said broken fronts are bounded by the waters at or near the Chaudière Falls, which admits of a situation for erecting such works, and that the lands lying between said Grand River to the River St. Lawrence, admit of settlement, which is not the case a distance of five miles in rear said River on the north side Province of Lower Canada, for which reason Mr. R., is desirous of erecting his works on the Upper Canada side, at the Chaudière Falls, which will be convenient in his getting his Ore to his works. Should those fronts not be granted, and the Surveyor General admits of my claim, covering the broken fronts adjoining Lots Nos. 38 and 40, but objects to the claim covering the broken front adjoining Lot No. 39, as being reserved for the benefit of the Clergy, Mr. Rudsdell will please to apply to the Governor and solicit the Governor to permit Mr. R's claim to cover the said broken front adjoining Lot No. 39, together with the grant of the small rocky clumps or islands lying in front of said Lots with a line beginning from the north west corner line of Lot No. 39, and running to the channel of said River, and from thence down the River with the said channel 10 chains below the north east corner line of Lot No. 40, including said bank and water, together with the said rocky clumps or islands lying within the said line; the timber growing on said broken fronts is mostly small cedar and spruce pine, commonly called a cedar thicket, and the soil scarcely to be cultivated, being extremely rocky:—the distance from the main to the rocky clumps or islands is about 60 feet, and except in the time of high water the passage is almost dry, the islands having the same growth of timber as the broken fronts, and the soil the same, and that the said rocky clumps or islands cannot contain more than twenty acres. By extending a dam from the main to one of the nearest rocky clumps and throwing a wing out into the main River, will command a sufficiency of water for Water Works, and except for building works of the aforesaid description, a grant of said broken fronts and islands would not be worth

possessing, but by erecting such Works it will bring on the settlement of the lands in that part of the Province which is totally uninhabited, which no doubt Government will be disposed to encourage, and as Government has granted to Messrs. Shuter & Mears, an island large enough to admit of a snug farm, and the soil of the best quality, lying at five times the distance from the main, and having a considerable depth of water between the main and the island the dryest season of the year, Mr. R. therefore flatters himself Government will be equally disposed to give him as much accommodation; and as the broken front of Lot No. 39 lays so near the place where Mr. R. wishes to build, he prays that Government may encourage him by taking off the reserve, so that he may have the fee simple of the land. When Mr. Rudsdell marks the letter R. upon the said broken fronts, he will likewise mark the same letter on the rocky clumps or islands, and claim the same as broken fronts, as the passage between the main and said islands is dry a considerable part of the year, but should Mr. Rudsdell find it out of his power to procure the broken fronts adjoining Lots No. 38 and 40, he will in that case endeavor to get a grant of the broken front of Lot No. 39, including the said islands and water courses within a line, beginning at the north west corner of Lot No. 39, running with the channel of the River 10 chains below the north east corner of Lot No. 40, but should Government not allow my claim to cover the broken front adjoining Lot No. 39, endeavor to get a grant of the islands and water courses as described, and take out a lease for the reserve Lot No. 39, and lay the remainder of my claim on the broken fronts of Lots No's. 20 and 21, laying on the River about 4 miles above the Chaudière Falls, in the said Township of Nepean. And should Mr. Rudsdell succeed in getting a grant of the said islands and broken fronts of No's. 38, 39 and 40, and should there not be a sufficiency of land to fill up my claim of 200 acres, he will please to lay it upon as much of the broken fronts of Lots No's. 20 and 21, bounded by the waters of the River as the deficiency may cover, covering also a small island opposite the north west corner line of Lot No. 21: should Government persist in not giving a grant of those four rocky clumps or islands, in that case, Mr. Rudsdell will take out a lease for the same, for as long a time as he can.

Cornwall, July 23rd, 1808.

No. 24.

To His Excellency FRANCIS GORE, *Esq., Lieutenant Governor of Upper Canada, &c., &c., &c., in Council.*

Having been applied to by Jonathan Rudsdell, late Attorney for Robert Randall, for our opinion whether the erecting a Mill Dam on the south side of the Grand or Ottawa River, Province of Upper Canada, in the Township of Nepean, and near the Falls of the Chaudière, will, in anywise interfere or obstruct the passage of canoes or boats navigating the said river, the said dam to run from the main shore to an island in the river, a distance of about sixty feet.

We do hereby declare, for the information of His Excellency the Governor and the Council of Upper Canada, that the said Mill Dam will not, in any manner, interfere with, or obstruct the navigation of canoes or boats in the Grand or Ottawa River, the usual route for boats and canoes being on the north side.

Given under our hands, in the City Montreal, this fifth day of October, in the year one thousand eight hundred and eight.

W. McGILLIVRAY.
Agent, N. W. Co.

No. 25.

YORK, *30th January*, 1809.

DEAR SIR,—I acknowledge the receipt of your several letters, and am much mortified that you should think yourself neglected. Your affair has been repeatedly before the Council, so

anxious have I been on your account, that I have personally attended the Governor, also the Chief Justice, out of Council, and exerted my personal interest in your favour. Though you are ordered personally to attend, I still hope to get through without; I am promised another hearing next Council. As to *writing*, I have once or twice written to you myself; and John Robinson whom you know to be with me, has also written to the care of Mr. Cozens—this will go under that address by a gentleman I can depend upon. You may rely on my exertions, and I think you will ultimately succeed. The certificates, &c., are very satisfactory. I was at the Council office yesterday. My son Henry also wrote to you on the reserve. The Council wanted an affidavit of the species of timber on the Lot—the reason of which is evident—that where, on the banks of our waters, we have either oak or pine, they reserve them for the navy, &c.

Yours most faithfully,

D'ARCY BOULTON.

Robert Randall, Esquire,
Ottawa River.

I shall have to advance the forty dollars before location, shall consequently draw on you the moment I have certainty of success.

No. 26.

(Copy.)

CHIPPAWA, *May 17th*, 1819.

HENRY J. BOULTON, Esquire,

SIR,—Time, Mr. Boulton, will disclose all things. If your knowledge of the Cabinet secrets of my business is such, as to cause you to have recourse to the measure you wish me to adopt in your letter that has been just now handed to me, by young Mr. Smith—I cannot perceive that your security need be better,—or that mine will be made much worse by not adopting the measure.

Probably Boulton, I might be more alarmed at the situation of my business, had I the secret knowledge of its true situation that you may have. But if my want of that knowledge, leaves me not alarmed, my ignorance must be my comforter, until time unveils to me, the result of my business. You will greatly oblige me by sending to me, as early as you can, a copy of the Note which Clark sues on, as well a copy of the writings that you got from Montreal, relating to the business.

I am, Sir,
With respect, your humble servant,

R. RANDALL.

Henry John Boulton, Esquire,
Attorney-at-law,
York, Upper Canada.

No. 27.

CHIPPAWA, *June 29th*, 1819.

SIR,—My motive in writing this letter to you, is not intended to palliate the high tone of your son Henry's procedure against me, for fees, including the sum of fifty pounds allowed for your management in the early state of my cause with Phelps, to amount of £125 currency, and the interest which he adds making the sum of £141 16s. 3d., currency—but purely for the respect I feel for you.

Your son Henry, is not satisfied with the Bond and Mortgage given him, dated 17th March, 1817, (for your and his fees in my suit against Phelps) for £100 currency, on a Lot of

land in the township of Nepean, District of Johnstown. He is not satisfisd with my Note of hand given him for Twenty-five pounds currency, at Niagara, on the 7th October, 1818, for his fee, which he insisted I should do, previous to his calling my cause against Phelps for trial at the then Assize, which cause, you, as presiding Judge, would not hear. From motives of delicacy, and ordered the cause to lay over as a Remanet of the Court for a future trial;—but he writes to me a letter, which I received on the 17th May last, wherein he says, "I have sent to my Clerk, Mr. William Smith, a Cognovit for the amount of £141 16s. 3d., currency, to be enabled, if so inclined, to take out an execution against you" I refusing so to do.

He again writes to me, handed by Mr. Jarvis, 23rd instant, wherein he says, I am very impertinent (I suppose for not having signed the Cognovit;) he also says the security I gave him is not worth half-a-dollar per acre, as there are no inhabitants in the Township. And Mr. Jarvis handed me a summons from Mr. Henry John Boulton, to appear on the first day of Trinity Term next, at York. Whether the land is worth half-a-dollar per acre or twenty dollars, it is not my motive at this present to make any comment. If the extreme scarcity of money does not preclude the interposition of my friends, I hope the land will not fall into his hands. It was through your instance that Mr. Henry Boulton became employed by me to manage my suit against Phelps. At the time he accepted the management of the cause, he was knowing that I was moneyless, and promised to wait for his fees until the termination of the cause: however, a few months after he made up an account of £50, currency against me, and required security for the same, upwards of six months too previous to his arguing the cause. I offered him security on land in Matilda, a Township thickly settled; his choice was Nepean; he knew the land in both Townships to be good. When you advised me to employ your son, I expected his assistance in recovering my property from the hands of a set of scoundrels; little did I expect that he would require of me a judgment bond for fees previous to the decision of the cause, or that I was to be ruined by the man employed to assist me. The steps of your son are so novel in the law practice of this Province, I consider it my duty, from the friendly understanding that has subsisted between you and me, to lay the business before you—not Sir, that I wish you to palliate the high tone and tenor of your son's speculative intentions. I may or shall endeavor to meet his wrath at every point, and neither of us may be the winner.

I am, Sir,
With respect,
Your humble servant,

R. RANDALL.

Hon. Justice Boulton,
York, Upper Canada.

No. 28.

Mr. Moore to Mr. Randall.

Sir,—I have been put in peaceable possession of the place at the foot of the Chaudière Falls, which belongs to you, Sir, by John Torry, late agent for you at this place; and he having absconded from this place to the United States, and I having some property in my care which belongs to you, as I am informed, I desire that you would inform me by letter or otherwise, how I am to dispose of it for your benefit. Providing I remain on your place, I will take the best possible care of such things belonging to you which are entrusted to my care; but if I should see cause to leave your place, I wish to know of you how I am to dispose of things in my hands, delivered to me as your property. I will likewise inform you that the greater part of your property here was deposited by Mr. Torry, in the care of Samuel Benedict, senior. Now, if you desire me to take charge of those things, I desire you to inform me and give me such credentials as will enable me to secure the same for you.

I am, Sir,
Your most obedient and very humble servant,

ROGER MOOR.

Nepean, 12th March, 1813.

No. 29.

To His Excellency Francis Gore, *Esquire, Lieutenant Governor of Upper Canada, &c., &c., &c.*

THE PETITION OF ROBERT RANDALL,

Humbly Sheweth:

That in the month of February, eighteen hundred and nine, Your Excellency in Council issued your warrant for one thousand acres of land in favor of your Petitioner, the patent and survey fees being duly paid to the acting Receiver General, on the 23rd day of February, 1809. That your Petitioner only received a patent for 950 acres, reserving 50 acres of the warrant for a future location, which your Petitioner intended might cover some rocky chasms, which properly belong to the broken front of Lot No. 40, in the first Concession, on the Grand River, in the Township of Nepean, District of Johnstown, which said Lot bears a portion of your Petitioner's location, out of the nine hundred and fifty acres. That your Petitioner was directed to obtain a certificate from some sworn Surveyor, or neighbours near the Chaudière Falls, that he and they could walk, in the dry season, from Lot No. 40 to the rocky chasms and not wet their feet; in which case the said rocky chasms would be considered part of the broken front of said Lot, and the fifty acres unlocated were to cover the rocky chasms and the intermediate space therein contained. But at the return of your Petitioner from this place in March, 1809, to Montreal, he fell a victim to the sharpest persecution, and was unrighteously imprisoned for debt, and in close confinement to the 13th of last month, which not only prevented your Petitioner from obtaining a certificate relative to the rocky chasms, which he could have done with much ease, but also from prosecuting his establishment at the Chaudière Falls, in the Grand River, which as well as the property which your Petitioner had sent on, to the amount of five hundred pounds, as a commencement in his business, entirely perished as soon as the late War was declared by the American Government against Great Britain.

Your Petitioner would have proceeded to his place at the Chaudière Falls for the purpose to obtain the relative certificate after obtaining his enlargement, but his debilitated state, and the fast approach of winter, made it requisite for your Petitioner to proceed to this place, from thence to Niagara, in order to look after his property in that part of the Province; and your Petitioner now conceives that he has the tacit approbation of those who were his adversaries, to proceed in making his establishment at the Chaudière Falls, on the Grand River, by their granting him his enlargement, and offering him their friendly assistance. He also flatters himself that his long and sharp sufferings are considered by those whom he viewed as enemies, to be an ample atonement for their unenvied and friendly return of feelings. And as Your Excellency may be well informed of the great utility your Petitioner's establishment of the Bridge Water Works, near the Falls of Niagara, were to the prosperity and growth of that part of the Province, he hesitates not, to say his establishment at the Chaudière Falls, on the Grand River, will be of equal, if not of superior importance to that section of the Province. Your Petitioner can with truth say, that his Bridge Water establishment at Niagara, gave a spring to the agricultural and mercantile interest, not only throughout the District of Niagara, but the Province at large; for your Petitioner was the first person who manufactured Flour for exportation in the Province of Upper Canada. Previous to your Petitioner's establishment at Niagara, both farmers and merchants were so circumscribed, as to be of little service to each other. His mercantile establishment at Cornwall, in the Eastern District of this Province, is also known to have been a growing benefit to that place; and had envy not overtaken your Petitioner, he would have turned the trade and produce of the whole Eastern District to Cornwall, whereas it formerly entirely went to Montreal. The chasms which your Petitioner considers to be part of the broken front of Lot number forty, are not or cannot be of the least importance either to Government or individuals, except to accommodate your Petitioner in establishing himself in business at the Chaudière Falls. A young gentleman who is at this place unexpectedly, at this moment, says, he has himself stepped from Lot number forty to the chasms, in the dry season of the year, and did not wet his feet, that he thinks the chasms should be considered as part of the broken front of Lot number forty, and is willing to declare the same before Your Excellency; he is a young man of veracity, and his declaration is to be relied on, which your Petitioner trusts will be proof sufficient to satisfy Your Excellency of the

propriety of his present request, and if it should be proof sufficient, your Petitioner most humbly solicits Your Excellency to order a deed to be issued in the name of your Petitioner, as follows:

Beginning at a cedar tree or boundary mark near the edge of the bank at the side of the Grand River, in the line between Lots thirty-nine and forty, and to run to the upper extremity of the fourth chasm, according to the annexed draft of it, from thence to the extreme point or upper end of chasm number three at the Grand Fall, running with the margin of said chasm at the water's edge to the north side, thence down the stream to the lower end or extreme point of said chasm, thence to the extreme point or lower end of chasm number two, from thence in a straight line to a small oak tree or boundary mark, in the north end of the east side line of Lot number forty, at the water's edge of the Grand River, thence with the water's edge, following the several turnings and windings thereof, to the place of beginning, with all the intermediate space therein contained, containing fifty acres more or less.

And, as in duty bound, your Petitioner will ever pray.

R. RANDALL.

York, Upper Canada,
November 2nd, 1815.

No. 30.

Dear Sir,—The date of the order in Council to locate 50 acres, to complete your grant of 1000, is 5th September, 1818.

Your's,

WILLIAM H. LEE.

R. Randall, Esquire.

No. 31.

Perth, 14*th December*, 1816.

Sir,—Yours of the 25th November came to hand yesterday; I shall with pleasure attend to Mr. Randall's concern, in the month of January, at which time I shall visit the *lot* in *question*, and ascertain the exact situation, and enclose you a sketch and certificate, and charge the same in account against you.

I have the honor to be,
Sir,
Your most obedient servant,

R. SHERWOOD,
Deputy Surveyor.

G. S. Boulton,
York.

No. 32.

Long-ash Estate, Nepean,
April 27*th*, 1818.

Sir,—Having lately arrived from England and settled on the Grand River, in the Township of Nepean, and being informed that the Lot adjoining to mine, which is No. 40, belongs to you, I have taken the liberty of troubling you to know if you are disposed to part with it, and on what terms: waiting an answer,

I remain,
Sir,
Your very obedient servant,

J. BARROWS.

Major Randall,
Little York, or elsewhere,
Canada.

No. 33.

UPPER CANADA.

TOWNSHIP OF LONGUEUIL,
7th February, 1819.

MR. RANDALL:

SIR,—I did myself the pleasure of writing to you last fall about your situation on the Grand Chaudière Falls, to which I have not had the pleasure of an answer; when I had the pleasure of seeing you, you spoke as if you intended to make speedy preparations to form a settlement and commence business, and expected you would have commenced previous to this,—hope your lawsuit you had depending, has terminated in your favor,—should be glad to learn if you have been successful, as I apprehend your attendance to that has prevented the visit you intended to make last fall,—I would be under obligation to you to inform me as quick as possible, if you would dispose of any part of your land above mentioned. If you are inclined, I would beg leave to offer to purchase a small portion, say an acre or two, immediately on the Point, leaving you the exclusive privilege of water. If you feel disposed, would thank you to inform me, with your conditions, hoping we may come to an understanding; I am in business now, where I have directed my letter from, but the situation does not suit me so well for business as one above. I have taken a large concern at the foot of the Long Sault Rapids, in the Grand River, which will be a place of considerable trade, and should like a situation on the Chaudière, in order to establish a communication with the Upper Country; if it is your intention to comply, please write me speedily, that I may not lose any time to erect a Store for the purpose of carrying on business next season, and would be glad you would give me the privilege so to do; if you have any commands relative to that place, you would wish to have executed, shall be happy to forward your designs by empowering me to act for you: should feel much obliged by your speedy information pro or con. As I wrote before on the subject, am fearful my letter miscarried, as I expected an answer.

I am, Sir,
Your very humble servant,
SAMUEL DOWNES.

No. 34.

NEPEAN, *8th May*, 1819.

SIR,—I had the honor of addressing you last Autumn, but not knowing your address correctly, I am doubtful of your having received it. The purport of that letter, as [illegible] the present, was to know if you would dispose of a part of your Lot of land on the [illegible] the Chaudière, as I should be glad to have one or two acres, either by sale or lease. I have not the honor of being known to you personally, but having served in the late war in various parts of Canada, and particularly in the part of the country where you at present reside, and although my military occupation prevented my having much communication with the gentlemen of your neighborhood, I believe you will obtain information of me from Mr. Samuel Street, though but little acquainted with that gentleman, I was at that time Deputy Assistant Quarter-master General, and at present have retired on Captain's half-pay, of the 60th Regiment, and having drawn some lands in this country, have taken up my residence at the Rapids des Chenes, five miles from your Lot, and as the whole of that distance is land carriage, I find a great inconvenience for want of a place to store my goods at the landing, and am now obliged to build a small store of round logs on your property, which, if not agreeable to you, I will immediately remove, but if you will either sell or lease one or two acres at the lower point, next to the Island, in the Bay, I shall be glad to know your terms by the earliest opportunity.

There is a person here by the name of *Burrows*, who pretends to be agent for that property, *alias Honey*, but as I could not believe that he was entrusted with any property, I have not applied to him. If you have no agent here, and that I can be in any way serviceable in that line, though not with the view of pecuniary motives, but merely for the advancement and settling of the country, I beg you will command me; I shall at all times feel happy to

communicate with you on the subject. Should your business at any time lead you to York, please mention my name to Judge Campbell, with whom I have had the honor of being acquainted some years past.

I have the honor to be,

Sir,

Your most obedient humble servant,

JNO. LEBRETON.

Robert Randall, Esquire,
Chippawa.

No. 35.

POINT NEPEAN, 8*th January*, 1820.

HONORED SIR,—Having wrote you on the 27th of October last, and not receiving an answer, I again take the liberty of troubling you on the same head.

Having been here ever since July last, and had every opportunity of seeing the necessity of a house of accommodation, I took the liberty of erecting one (as a tavern,) near the old house built by Mr. Torry.

It being the opinion of every one here, that nothing can be done on the Point in regard of cultivation, I mean, with your full approbation, to make a trial, by laying out a garden, having been gardener seven years in this country, during my service here in the Royal Artillery, being employed chiefly by Generals Brock and Glasgow.

From what I have heard from several persons who have the honor of being acquainted with your character, I have every reason to hope for a favorable answer, or should not have gone thus far without hearing from you. I hope therefore, Sir, you will not think it too much trouble to send me an answer the first opportunity.

As to my character, I can no doubt fully satisfy you on that point; in compliance with the above, you will much oblige,

Sir,

Your humble servant,

ANDREW BERRIE.

No. 36.

Trinity Term, 2nd Geo. IV.

IN THE KING'S BENCH,
DISTRICT OF NIAGARA, TO WIT.
Henry John Boulton,
vs.
Robert Randall.

Robert Randall, of the Township of Stamford, in the District of Niagara, Esquire, the above named Defendant, maketh oath and saith, that during the Session of the Legislature of February last past, this Deponent in a conversation with Mr. Morris, of the County of Carleton, was informed that his land in the Township of Nepean, in the Johnstown District, was sold by the Sheriff of the said District, under and by virtue of a Writ of fieri facias in the above suit, and this Deponent further saith, that not until then did he know that the said Henry John Boulton had obtained a Judgment against him, and this Deponent further saith, that pecuniary embarrassments prevented this Deponent from applying before to set aside the said proceedings, which the Deponent could never expect to have been carried to such lengths nom promises held out by the said Plaintiff, namely, that the bond was only taken, upon which part of this action is brought, as a security for his, the said Henry John Boulton's fees, and his father's, now the Honorable Justice Boulton.

Sworn before me, this 10th day of July, 1821.

(Signed,) J. MUIRHEAD,

Commissioner for taking affidavits in K. B., in and for the District of Niagara.

(Signed,) ROBERT RANDALL.

No. 37.

York, 31*st December*, 1823.

(Copy.)

Sir,—An application has been made to me, by Mr. Jonas Jones, Barrister at law, to furnish him with instructions to defend an action of ejectment brought by Mr. L. Sherwood and Captain LeBreton, for the purpose of getting possession of lands and tenements which belong to me, and which are at present in the actual possession of Messrs. Berrie and Firth, &c.

As Colonel Burke, the gentleman who employs Mr. Jones, could not have been fully aware of the whole of the circumstances at the time he employed him, I beg leave to state to you, Sir, for His Excellency the Commander of the Forces' information, that Mr. Jones is not only brother-in-law to Mr. Sherwood, but also brother-in-law to Mr. Boulton, the person who upon an ex-parte proceeding obtained judgment against me, issued execution, and sold this property for the sum of one hundred and twenty-five pounds, for fees accruing to him in his prosecuting a suit for me in the sum of ten thousand pounds, currency, wherein I had obtained two verdicts for the aforesaid sum, which Mr. Boulton abandoned, and my suit thrown out of Court. His Excellency the Commander in Chief is in possession of the case in detail.

I also beg leave to communicate for the information of His Excellency, that I have employed Mr. John Rolph, Barrister at law, to commence a process against Mr. Boulton, in order to set aside the Judgment obtained against me, and for which this property has been sold at Sheriff's sale, and as he is in possession of the whole proceedings and documents in the case, and being of the first respectability, and not long since from the Temple, in London, and no way connected with the above gentleman, I humbly beg leave to suggest the propriety of associating Mr. Rolph with Mr. Jones, in defending Messrs. Berrie and Firth against the suits of ejectments, not that I have any reason to suppose that Mr. Jones would in any wise be influenced by his connection with Messrs. Sherwood and Boulton, only that human nature is generally more or less influenced by family connexion, which induces me to beg leave to recommend to His Excellency, that Mr. Rolph be associated with Mr. Jones in the defence of the said suits of ejectments, and if His Excellency should think proper so to do, that he will please to order that Mr. Rolph have the earliest notice thereof, directed to him at Vandas, in the District of Gore, Upper Canada.

I have the honor to be,
Sir,
Your most obedient and very humble servant,
ROBERT RANDALL.

Lieutenant Colonel Dickson,
Deputy Quarter Master General,
Quebec.

No. 38.

Deputy Quarter Master General's Office,
Quebec, 24*th January*, 1824.

Sir,—I have the honor to acknowledge the receipt of your letter of the 31st ultimo, which having submitted to the Commander of the Forces, I have received His Lordship's commands to thank you for the suggestion therein contained, but at the same time to acquaint you, that His Lordship does not deem it necessary to employ further Counsel in the question.

I have the honor to be,
Sir,
Your very obedient humble servant,
WILL. R. DICKSON,
Captain and Dep. Qr. Mr. General

R. Randall, Esquire, M. P. P.,
York.

No. 39.

York, 23*rd June*, 1824.

Dear Sir,—I hasten to inform you, that yesterday morning, as soon as decency would permit, I addressed a note to Major Hillier, on the subject of the Writ of Error, stating Mr. Cameron's refusal to seal it. In the evening, I had the honor of receiving a note from the Major, a copy of which I enclose for your perusal. You will see, therefore, that thus far we go swimmingly, however we may succeed hereafter. I have been favored with a letter from Mr. Rolph, stating that it will be impossible for him to attend here sooner than the latter end of the Term. I am sorry for it, as I wanted his assistance much; but, however, as I am fairly in for it, I must of course pursue it. Whatever lies within the compass of my small abilities, (and very small they are, I know,) you may rest assured will be done for you. But as there is no one thing under heaven more uncertain than the certainty of the law, I would not have you too sanguine. You know whom you have to contend with. Term begins on Monday, 6th July.

Faithfully yours,

S. WASHBURN.

Robert Randall, Esquire,
Stamford.

(Copy.)

"Major Hillier has the honor to acquaint Mr. Washburn, that the necessary instructions have been given to the Provincial Secretary, to affix the Great Seal to the Writ of Error "required by him."

"Government House,
"York, 22nd June, 1824."

No. 40.

Brockville, 6*th April*, 1827.

Sir,—At the desire of Mr. Charles Lemoine, I have enclosed you the within, should you incline to sell, please write me your terms.

I am, Sir,
Your obedient servant,

ADIEL SHERWOOD.

Robert Randall, Esquire.

For Mr. Charles Lemoine, *of Augusta, Blacksmith.*

To write to Robert Randall, Esquire, M. P. P., Chippawa, above Niagara, stating that he, Lemoine, wants to purchase Lot No. 11, on the Rideau, 1st Concession of Nepean,—also state that R. Sherwood bid the same off at auction some years since, but the Sheriff refuses to give a title, and therefore this Lot must be considered Mr. Randall's property as yet.

R. SHERWOOD.

24th March, 1827.
A. Sherwood as agent, may send this if he chooses.

R. S.

No. 41.

The Bill of the Session of 1830, was similar in its provisions to that of 1828, only that it appointed the Speaker of the House of Assembly of Lower Canada, the Chancellor to try the case, instead of Mr. Justice Willis, who had gone to England.

On the question for passing it in the House, the Yeas and Nays were taken as follows:

YEAS.—Messrs. Baby, Doctor Baldwin, Blacklock, Brouse, Buell, Cawthra, Dalton, Dickson, Fraser, Hamilton, Henderson, Hopkins, Hornor, Ketchum, Lefferty, Longley, Lyons, McCall, Mackenzie, Malcolm, Morris, Perry, Radenhurst, John Rolph, Shaver, Smith, Terry, Thomson, Wilkinson, James Wilson and Woodruff.—31.

NAYS.—Messrs. Bethune and John Willson.—2.

So the Bill was signed and sent up to the Legislative Council, who refused to concur in and declined to amend its provisions.

No. 42.

BYTOWN, 21*st July*, 1835.

W. L. Mackenzie, Esq.

SIR,—I have been here about three days looking after the Chaudière property, and examining maps, &c. I find Captain LeBreton owns Lot No. 40, covering the Falls. It is, or rather will be, Bytown itself, and is very valuable. A gentlemen tells me that he will give £1000 for the sole privilege of making a slide down the Falls to run timber over, and the Lot will be a Town plot.

No. 38 belonged to Judge Sherwood, and he sold it to one Peter Aylwin, for £350 cash, and it is worth double that.

No. 39, Clergy Reserve, Government holds as I am told, it meets the Union Bridge at the Ottawa, there are good buildings on it, occupied as I believe, by one Firth.

Yours, &c.,

C. WATERS.

LONGUEUIL, 28*th July*, 1835.

W. L. Mackenzie, Esq.

I have been at Richmond, in the County of Carleton, and at Perth, in the County of Lanark, and have examined the Office of Registry at Richmond, in going and returning; at Perth I examined the Treasurer's Office, and also the Registry of that County, I find that from the Sheriff's deeds of sale of Major Randall's lands in Nepean, John LeBreton purchased Lot No. 40, first Concession on the Ottawa, and the broken front of said Lot, &c., that Levius P. Sherwood, a Judge in the King's Bench, purchased broken Lots Nos. 10 and 11, first Concession, and Lot No. 10, second Concession, on the River Rideau, and that afterwards to John LeBreton, by deed and release made by L. P. Sherwood, Esquire, a joint proprietor of the Lot No. 40, first Concession, and broken front of said Lot on the Ottawa, that is to say, one undivided half of said Lot and broken front thereof; and that L. P. Sherwood, Esquire, by deed conveyed to John LeBreton, the one undivided half of Lots Nos. 10 and 11, first Concession, No. 10, second Concession, on the River Rideau, and that exchange deed or deeds of separation and division were passed and exchanged between them, and thereby L. P. Sherwood owns east half of Lot No. 40, in the first Concession, and broken front of said Lot on the Ottawa, together with an equal privilege of four islands in front thereof, and that John LeBreton owns the west half of said Lot and broken front thereof, islands, &c. These conveyances appear to be of the nature of lease and release from one to the other, firstly, to make them co-partners, and then a division of Lot No. 40, in first Concession, and broken front of said Lot, &c., on the Ottawa, which plainly shews what I had always understood, that they purchased those lands in partnership, at Sheriff's sale; the Lot No. 40, &c., on the Ottawa, is in reality, and there might easily be made of it, in my opinion, £10,000. It covers water privileges worth half that sum. The Union Bridge across the Ottawa, abutting on the Lot. For sales out of the broken front of said Lot, you will notice the annexed memorandum; there are two parcels or privileges, one of which, (an acre,) was conveyed by L. P. Sherwood, Esquire, and Charlotte, his wife, to His Majesty King George IV., on which stands a block of buildings at the end of the Bridge, built by Government, but now unoccupied. These are

the buildings I formerly mentioned that were supposed to be on the other Lot: this Lot and privileges are certainly the most valuable property in all this part of Upper Canada.

Lot No. 10, in the second Concession, River Rideau, comprises a valuable Mill site on the River Jacques, emptying into the Rideau; broken Lots 10 and 11 cover the mouth of that River, and front on the Rideau River. These Lots, together with No. 11 in the second Concession, are in my opinion, worth 40s. to 50s. per acre; the lands are good, and privileges great. Lot No. 40, first Concession, &c., on the Ottawa, might, and in fact will, and must be a continuation of Bytown, which will in a few years, be the most important Town in Upper Canada.

There is no one on the lands on the Rideau. There are squatters on No. 40, on the Ottawa, but I cannot find out that there are any on No. 39 or 38, (Ottawa.)

N. B. The second parcel of land sold out of the broken front of Lot No. 40, on the Ottawa, is as follows,—Firstly, from John LeBreton, out of the east half a water and land privilege, &c., to Samuel Stacey and George Lyman Bellows, both Foreigners. Samuel Stacey then sold out his right to the said George L. Bellows, then George L. Bellows sold to Henry Stacy, then Henry Stacy sold out to Henry Church, Henry Church then sold out to Matthew Cormell of Bytown, since dead; this is as far as I can trace any sales or titles in the Bathurst District; it has been a most extraordinary as well as an intricate transaction. The conveyances appear to be quit claims, which shews a doubt of the title. L. P. Sherwood and wife, sold the acre to the King, in 1829, February 24th.

Mr. Henry Sherwood professed to sell Lot No. 30, first Concession, Ottawa, and received a sum of money and gave a receipt, but gave no deed. Afterwards the Honorable L. P. Sherwood sold the same Lot, as I am informed, to Peter Aylwin, for $1,400, but I can find no record or deed. In this sale there is a mystery; this Lot will soon be worth £10,000, if not now.

Yours, &c.,

C. WATERS.

APPENDIX (B)

THURSDAY, 21*st March*, 1836.

The Committee met.

Charles Waters, Esquire, M. P., Ottawa District, called in and examined:

Question 1 What do you consider the fair value of the property in Nepean claimed by Mr. Randall's Heirs, and for which he has a Grant and Deed from the Crown dated in 1809?

Answer 1. The value of the property on the Ottawa River, embracing, as it does, water privileges of the first magnitude, and an extensive quarry of the first rate stone for building, and lying in the immediate vicinity of Bytown and over which Bytown would shortly extend if Plots were exposed to sale, is immense at the present moment, and from the commanding position of Bytown the increase in the value of this property must be very rapid and very great; and which, together with the valuable property at the confluence of the River Jacques with the River Rideau, embracing as it does a most valuable Mill scite and other important advantages, I should consider the whole, were I the owner, worth about £20,000.

Question 2. Have you personally inspected and examined this property?

Answer 2. I have.

Question 3. The statements by you and now shewn you [No. 42, above] are they not the results of personal inquiry by yourself on the property?

Answer 3. They are the results of personal inquiry, made by myself on the property.

No. 1.

GOVERNMENT HOUSE,
TORONTO *25th August*, 1835.

SIR,—I am directed by the Lieutenant Governor to transmit to you, with reference to your application of the 19th inst., the accompanying copy of a statement from Mr. Stanton—and the form of notice which he has been authorized to adopt, in communicating your intention of petitioning the Legislature as an Executor of late Mr. Randall.

I am, Sir,
Your obedient servant,

W. ROWAN.

W. L. Mackenzie, Esq.,
ST. CATHERINES.

No. 2.

(Copy.)

TORONTO, *25th August*, 1835.

SIR,—On the subject of the notice desired to be given by Mr. Mackenzie, referred to in your letter of yesterday's date, I beg that His Excellency may be informed that in conversation with Mr. Mackenzie after my note No. I, I did endeavor to point out to him as plainly as I thought would convey in ordinary and usual terms the information he was desirous of notifying to the public and which would have been much to the following purport:

"*To all whom it may concern:*

"Public notice is hereby given that application will be made to the Legislature at its next ensuing Session by petition from the Executor to the estate of the late Robert Randall, Esq., for the enactment of a law establishing a special tribunal for the revision of certain proceedings in the Court of King's Bench, by which Lots (enumerating the lands as described) granted by the Crown to the said late Robert Randall in 1809, were adjudged to be sold, or were sold by the Sheriff and conveyed to others; and until the issue of such application shall be determined all persons are warned against purchasing or leasing any part of the said property."

If Mr. Mackenzie had felt at all disposed to meet such a suggestion, or had chosen to adopt any other form of words of his own, conveying in substance such a notification to the public, the insertion in the Gazette would not have been made matter of question.

If the notice, which is above suggested, should appear to be sufficient for the proposed object, and is approved of, His Excellency's desire for its insertion in the next Gazette shall not fail to be duly attended to.

I have, &c,
ROBT. STANTON.

No. 3.

CASTLE OF ST. LEWIS, QUEBEC,
21*st February*, 1823.

SIR,—His Excellency, the Governor in Chief* commands me to acquaint you, in answer to your Letter of 20th instant, that he has had under his most serious consideration your memorial of last summer, setting forth various grievances and acts of injustice to you in your civil rights, on the part of different persons connected with the administration of the law in the Upper Province, and His Excellency directs me to add that as he does not possess the authority either

* The Ear' of Dalhousie.

to investigate or redress your alleged grievances, he can only refer you to the Governor of that Province who will, no doubt, pay all proper attention to your representation.

I have the honor to be,
Sir,
Your most obedient servant,
A. W. COCHRAN,
Secretary.

R. Randall, Esq.
York, Upper Canada.

No. 4.

(Copy.)

York, *March* 4, 1830.

Sir,—I have the honor of transmitting to you for the information of His Excellency the Lieutenant Governor, a copy of the Report made by the House of Assembly upon my petition of grievous loss of property from the undue administration of public justice.

That others may have suffered from the same cause I cannot doubt, but I humbly hope that the patient suffering of injustice by many will not be prejudicial to my seeking relief against the magnitude of my loss.

The enclosed Report was the result of an investigation by a Committee composed of the present Speaker of the House of Assembly, the present Chief Justice, Captain Matthews, Mr. John Rolph and Mr. Beardsley.

On the Report of that Committee a bill was passed by the last Parliament to enable Mr. Justice Willis to try the case over again, and thus supply the want of a Court of Equitable Jurisdiction, a means of redress which exists in England in ordinary cases.

The bill was lost in the Legislative Council.

A bill for the same purpose passed the representative branch of the Legislature during its present Session, to enable the Speaker of the House of Assembly of Lower Canada to try the cause. It was agreed to with only two opposing voices, and that too after the case had had the fullest consideration both in and out of Parliament. But the bill was lost in the Legislative Council and I am still without redress.

That it is His Excellency's anxious and earnest wish that speedy and impartial justice should be administered to all His Majesty's subjects, without distinction, I firmly believe. And whether the obstruction in my case arises out of the composition of the Legislative Council, or from any other cause to me unknown, I trust that His Excellency will exert his powerful influence to remove that bar, so that I may be enabled to have my case fairly tried and determined in a Court of law.

I have the honor to be,
With profound respect,
Your most obedient and humble servant,
(Signed,) ROBERT RANDALL.

Z. Mudge, Esquire,
Civil Secretary.

No. 5.

Government House,
York, 25*th March*, 1830.

Sir,—With reference to your statement transmitted to the Lieutenant Governor on the 4th of March, with the copy of the Report made by the Committee of House of Assembly, I am

directed to acquaint you that these documents have been sent to Mr. Boulton for his observations and reply; but as it appears that before Mr. Boulton can be called on to enter fully into an investigation of any of the charges that you may now think proper to allege against him, and which it is understood you have on several occasions brought forward, His Excellency requests that you will transmit to me for his information, such a statement of your case as may exhibit distinctly whether the grounds of your complaint are against Mr. Boulton as conductor of your suit, or against the Judges for an illegal decision, or against the Sheriff, or the purchaser of your property.

I have the honor be be,
Sir,
Your most obedient,
humble servant,
Z. MUDGE.

Robert Randall, Esq.,
M. P. P.

To the Honorable the Commons' House of Assembly of Upper Canada, in Provincial Parliament Assembled.

The Petition of Robert Randall, of Stamford, in the County of Lincoln, Esquire.

HUMBLY SHEWETH:

That in the Year of our Lord one thousand eight hundred and sixteen or thereabouts, your Petitioner employed the present Mr. Justice Boulton, then Attorney General, as his legal adviser, in all his affairs relative to the disputed property between the Petitioner and Messrs. Clark and Street. That Mr. Justice Boulton continued such his legal adviser and Attorney until his elevation to the bench, when he handed over the Petitioner's business and papers to his son, the present Solicitor General. That upon Mr. Justice Boulton's so giving up the business of the Petitioner to Henry John Boulton, Esquire, the latter required of the Petitioner a collateral security for the sum of fifty pounds, then due to his father, for his professional services, as also for fifty pounds, which were to accrue to himself. That your Petitioner accordingly on the seventeenth day of March, in the year of our Lord, one thousand eight hundred and seventeen, executed and delivered to the said Henry John Boulton, a mortgage on Lot No. eleven in the first Concession on the Rideau, in the Township of Nepean, in the District of Johnstown, containing two hundred acres, for one hundred pounds, payable with interest on the first day of January, in the year of our Lord one thousand eight hundred and nineteen, and on the seventh day of July, in the year of our Lord, one thousand eight hundred and eighteen, your Petitioner executed and delivered to the said Henry John Boulton, a bond in a penalty of two hundred pounds, with a condition reciting the said mortgage, and to pay to the said Henry John Boulton the sum of one hundred pounds as mentioned in the said mortgage. That the above described Lot is a most valuable one, your Petitioner having many years ago been offered two pounds an acre for it, and another Lot in the said Township having been subsequently sold at Sheriff's sale, at Mr. Boulton's suit, for ready money, for four hundred and fifty pounds, or thereabouts, as your Petitioner has been informed and believes.

That subsequently, and after the execution and delivery of the bond and mortgage, the said Henry John Boulton proceeded in the business of your Petitioner, and obtained against one Elijah Phelps, a verdict for a large sum—which having been set aside, and a new trial granted, the cause again came on for trial, at the Niagara Assizes, for the year one thousand eight hundred and eighteen, where Mr. Justice Boulton presided, and where your Petitioner attended, with a great number of witnesses to go to trial. That the said Henry Boulton also attended as Counsel for your Petitioner, but who refused in the first instance going on with the trial, until the Petitioner had given him his note for twenty-five pounds, payable on the first day of May A. D. 1819; but which note was not given without a strong remonstrance from your Petitioner, as he considered he had already given him ample funds of security. That after giving the said note, Henry John Boulton promised to go on with the case immediately; when your Petitioner went in search of his witnesses; but on his return was not a little astonished to find,

that the cause had been ordered to lie over to the next Assizes, in consequence of the Judge declining from motives of delicacy to try it. That your Petitioner strongly remonstrated against such a decision, both with his Counsel and his father the Judge, who admitted to the Petitioner that before he accepted the Circuit in which Niagara is, he knew this trial would come on, and had determined not to try it, as he had formerly been concerned in it. That the said Henry John Boulton must have been aware that this cause would not be tried; but had allowed your Petitioner to go to a considerable expense in gathering his witnesses; had obtained his note for twenty-five pounds, and then abandoned him, and has never since done any business for him.

That afterwards and immediately after the said note became due, your Petitioner was sued thereon, and upon the aforesaid bond by the said Henry John Boulton—he having got out his writ directed to the Sheriff of Niagara, on the twenty-first day of May, A. D. 1819—and the note being only due on the first day of that month. That on the twenty-fourth day of June, 1819, your Petitioner was served at his residence at Stamford, in the Niagara District, with the declaration and summons, at the suit of the said Henry John Boulton, returnable on the first of Trinity Term then next, and from that day, until about eighteen months afterwards, and never until he was accidentally informed whilst attending his duty in Parliament, in the winter of 1821, of the sale of his lands at the suit of Henry John Boulton, did he hear verbally or by letter of its progress. That immediately after he was so served with the declaration and summons, your Petitioner wrote to the said Henry John Boulton upon the subject, requesting to be informed of the progress of the said suit, but receiving no answer, he imagined the same was dropped.

That on looking into the proceedings in the said suit, he finds the following to be the statement:—

The summons issued the thirty first day of May, and was returnable on the first day of Trinity Term, 1819. That on the thirteenth day of July following, on the affidavit of service of the same, on this Deponent, the declaration and summons were fyled in the Crown Office, and on the same day an appearance entered in the same office by the said Henry John Boulton for your Petitioner. That on the same day an affidavit was fyled in the said office, made by a clerk of the said Henry John Boulton, that the place of residence of your Petitioner "in the Home District" was unknown to the person who made the affidavit. That on the same day a demand of plea was put up or fyled in the said office, and accompanied the said affidavit. That on the nineteenth day of June, four days afterwards, *interlocutory* and *final* judgment was signed against your Petitioner, and execution issued against the personal effects of your Petitioner to the Sheriff of the Home District for the amount of the bond, notes and costs. That in his declaration against your Petitioner, the said Henry John Boulton declared in debt on the bond and note together, signed judgment on the same together, and issued execution against your Petitioner for the same.

That the execution against your Petitioner's chattels (directed to the Sheriff of a District in which it was notorious to the Plaintiff, as well as to every other person who knew him, that he did not reside,) was returnable on the first of Michaelmas Term in the same year, and was fyled on the return day with the Sheriff's return of "no goods;" and on the same day, execution was issued against the lands of your Petitioner, directed to the Sheriff of the Johnstown District, and returnable last of Michaelmas Term, A. D. 1820, upon which your Petitioner is informed a most valuable Lot situated in the Township of Nepean, in the District of Bathurst, on the River Ottawa, and adjoining most important water privileges, *and not the one mortgaged*, has been sold to satisfy the said execution.

That by the tenth Section of the Act of the 34th of George the Third, regulating the practice of the Court of King's Bench, and under which Act the process in the said cause was issued, it is *expressly enacted*, "That in all actions or suits where the Defendant or Defendants reside without the limits of the Home District, or District where the Court shall be holden, eight days shall be allowed after such demand of plea, as the ordinary time within which they shall be required to fyle their plea, &c." But that notwithstanding the said Act, the said Henry John Boulton, who perfectly knew the residence of your Petitioner to be within the District of Niagara, and not in the Home District, not only from having served him with the writ there, but also, from the letter which your Petitioner wrote to him after the

action was commenced, proceeded to sign not only interlocutory but *final* judgment within four days after demand of plea, and that put up or fyled in a District where he well knew your Petitioner did not reside.

That your Petitioner is informed by professional gentlemen, that in no instance upon judgment by default, on a promissory note, can execution be issued, until the note has either been to a jury to assess the damages, or been sent by a rule of Court to the proper officer, to compute the principal and interest; but that notwithstanding this rule of law, execution after judgment by default was at once issued on the promissory note so given by your petitioner to the said Henry John Boulton.

That by a general rule of the Court of King's Bench, in the 40th year of the late King, it is expressly ordered, that in future, the note or bond is to be produced for the inspection of the judges, "when a motion is made to refer them to the master," but that the said Henry John Boulton, not only did not produce either the note or bond to the judges, but did not even move the Court to have them referred to the master.

That by another general rule of the said Court made in the same year, it is expressly "ordered, that from and after the end of this (Michælmas) Term, the clerk give no writ of execution on default, without an order of the Court in Term time, or fiat of a judge in vacation." That notwithstanding this rule, then in full force, the said Henry John Boulton proceeded to sue out execution against your Petitioner, on a judgment by default without either an order from the Court or fiat from the Judge.

That by another Rule of the said Court made in Hilary Term, in the 47th year of the same King, it is also expressly "ordered, that in *all* cases of Judgment by default, on Bonds, "conditioned for the payment of money, a rule Nisi, to refer the Bond to the master for "taxation, shall not be necessary, but a notice of motion for the peremptory rule shall be "given in writing to the Defendant, or his Attorney, at least thirty days before Hilary and "Easter Terms, and twenty-one days before Trinity and Michælmas Terms respectively," which rule shall accordingly be made absolute, in the first instance, on affidavit of such notice. That notwithstanding this rule was in full force at the time of signing the judgment against the Petitioner, he never received, nor did the said Henry John Boulton ever give the above required notice to your Petitioner, or to any Attorney for him.

Your Petitioner further represents, that as the said condition of the said Bond recited the said Mortgage, and professing therefore to be only collateral security, your Petitioner was entitled to the benefit of an Act of the Legislature of the Mother Country and in force in this Province, requiring in behalf of such Defendants, that the Plaintiff shall set forth on record, the condition of such Bond, assign breaches thereof, and assess damages before a jury, and your Petitioner is informed that according to law no execution can in such case issue till such assessment has taken place. But in the suit against your Petitioner, the condition of the Bond is wholly suppressed and does not appear on the record.

Your Petitioner found in the course of the applications made by him to the Court of King's Bench for relief, that the following rule was insisted upon as a vindication of the judgment secretly obtained as aforesaid.

Michælmas Term, SCOTT, C. J. }
THORP, J. }

It is ordered, that from and after the first day of Hilary Term next, in all cases where the Defendant has not appeared either in person or by his Attorney, judgment for default shall not be signed, without an affidavit first made and fyled of a demand of plea having been served upon the Defendant personally, or by being left at his usual place of abode, if the same be in the district where the action is brought; and if the Defendant's place of abode be not in such district, that then the demand of Plea shall be entered in the office, accompanied by an affidavit stating that the Defendant's place of abode within such district is not known to the Deponent, and that Judgment by default in such case shall not be signed till 4 days after such service or entry respectively:—By the Court.

(Signed,) JOHN SMALL,
Clerk of the Crown.

Under this rule, persons are required to take an oath that must do violence to the conscience of the Deponent, inasmuch as it implies a belief that the Defendant's place of residence is in such District, but not known to the Deponent.

Your Petitioner also felt deeply aggrieved at the operation of the said Rule, not only because it arbitrarily deprived your Petitioner of a service of the notice at his place of abode, and warranted a judgment in 4 instead of 8 days, in defiance of the laws of this Province, but also because it violated the common principles of justice, by requiring notice to be served upon the residents of the Home District, while it favored the Attornies of this Town, by exempting them from the trouble of giving such notices to those Defendants, who from their remoter residence from the Crown Office in the outer districts, particularly needed a rule of the said Court to enforce, rather than to supersede, the just enactment of the Provincial Legislature, for their protection.

That on being informed as before mentioned, of the sale of your Petitioner's lands, at the suit of the said Henry John Boulton, (and which was the first intimation he ever had of the progress of the said suit), your Petitioner immediately caused the proceedings to be looked into, and finding the above gross irregularities in the proceedings, he caused an application as soon as Counsel could be heard, to be made to the Court of King's Bench for relief, in setting aside the judgment and execution which had been so manifestly obtained against every rule and order of the said Court; but after argument, the Court decided it came too late.

That your Petitioner subsequently caused another application to be made on the same and other grounds to set aside this judgment, conceiving that it had not been fully argued, but it was again decided against him, on the grounds of the former decision, although the Court expressed a strong wish to interfere, if it could consistently with its rules.

Your Petitioner also humbly states that on the second application made for relief against this judgment, the Judges of the said Court upheld the same on the ground that the matter had been before heard and determined by them, and that according to an ancient rule of Court in the reign, as your Petitioner believes, of one of the Jameses no matter heard by Counsel on both sides and on which the opinion of the Court had been given could be re-opened, and that the Counsel attempting it was liable to be silenced for one year, and should the Court be again troubled a second time in like manner, they would desire to see the penalty inflicted; and your Petitioner cannot but feel and express the oppression which he suffers from the unjust adherence to one rule of court for the purpose of upholding against your Petitioner a judgment which had been obtained by the violation of three other rules of court equally solemn and binding, and even in violation of several legislative enactments in this Province and in England, the due and honorable observance of which by the said Henry John Boulton would have been an ample protection for your Petitioner against the ruin and injustice brought upon him.

That in the year 1824, immediately after the last decision, as a last resort to get rid of this extraordinary judgment, your Petitioner was advised to bring a writ of error *coram nobis* to reverse this said judgment, that being, in the opinion of his Counsel, his only chance; but the difficulty lay in procuring the writ, as it is an original one which issues out of Chancery, and there being no Court of that description in this Province. This difficulty was, however, at last surmounted, the writ obtained under the great seal of the Province, error assigned and pleaded to, and the matters argued in the vacation of Trinity Term, A. D. 1825, before two of the Judges, Mr. Justice Boulton being absent in England, and judgment was to be given in the following Term.

That on applying for judgment, so faras your Petitioner could judge, the Judges seemed divided in their opinions, and that therefore your Petitioner would have received nothing by a division of opinion—but without giving judgment, the decision was, that the matter must stand over till the Bench was full.

That this was to your Petitioner tantamount to a decision against him, inasmuch as Mr. Justice Boulton had on a former occasion, as before stated, refused to try a cause in which he had been interested for your Petitioner, and could not now of course be expected to give an opinion either way, as the greater part of the money recovered by this very judgment had been received by him.

That strange as it may seem, the Sheriff of the Johnstown District, instead of selling the Lot, so mortgaged by your Petitioner to the said Henry John Boulton, and thus as it were foreclosing the same, sold another and still more valuable lot belonging to your Petitioner, and the same was purchased, as your Petitioner has been informed, by Levius P. Sherwood, Esq., who has since been elevated to the Bench.

That your Petitioner, under these circumstances, would not feel it proper, and has been advised not to apply to the Court for their judgment, which your Petitioner thinks, under the very peculiar circumstances of the case, could not be had, for the same reason that the Honorable Mr. Justice Boulton once refused to try a case for him.

Your Petitioner humbly represents, that after submitting to many losses and afflictions which would break the heart of almost any man, he found that the most valuable remnant of his property had been most cruelly sacrificed, under this irregular and nefarious judgment, and unless relieved by the interposition of your Honorable House, he shall have to number himself among those who have fallen victims to injustice and oppression in this Province.

That there being no higher court in this Province, to which your petitioner can now resort, he has thus petitioned your Honorable House to interfere and grant him such relief as to your Honorable Body may appear just.

And as in duty bound will ever pray.

ROBERT RANDALL.

York, January 19th, 1828.

Certified to be a true copy,

JAMES FITZGIBBON,
Clerk of Assembly.

UPPER CANADA—ADMINISTRATION OF JUSTICE.

[From the Journals of the House of Commons, July 31, 1832—3, William IV, vol. 87, page 541.]

ADDRESS RESPECTING UPPER CANADA.

"*Resolved*, That an humble Address be presented to His Majesty, that He will be graciously pleased to give directions, that there be laid before this House, a copy of an Address to His Majesty, from the House of Assembly of *Upper Canada* on the Administration of Justice, dated 14th March, 1829, which Address that House humbly prayed His Majesty to lay before the House of Commons of *Great Britain* and *Ireland*."

"*Ordered*, That the said Address be presented to His Majesty by such Members of this House as are of His Majesty's most Honorable Privy Council."

[From same volume, page 554, August 3.]

Answer to the Address.

"Lord Viscount *Althorp* reported to the House, that their Address of the 31st day of July last, had been presented to His Majesty; and that His Majesty had commanded him to acquaint this House, that he will give directions accordingly."

[From same volume, page 589, August 16th.]

"Mr. *Rice* presented," "Return to an Address to His Majesty, dated 31st July last, for copy of an Address to His Majesty, from the House of Assembly of *Upper Canada*, on the Administration of Justice, dated 14th March, 1829."

"*Ordered*, That the said papers do lie upon the table; and be printed."

[From the Sessions' Papers of the House of Commons, 1831–32, No. 740.]

Return to an Address to His Majesty, dated 31st July 1832, for copy of an Address, &c.

Colonial Department, Downing Street, 15th August, 1832.

(Signed,) R. W. HAY.

(*Mr. Hume.*)

UPPER CANADA.

Copy of an Address to His Majesty, *from the House of Assembly of Upper Canada, dated* 14*th March*, 1829.

TO THE KING'S MOST EXCELLENT MAJESTY.

Most Gracious Sovereign,

WE, Your Majesty's dutiful and loyal Subjects, the Commons of Upper Canada, in Provincial Parliament assembled, humbly request Your Royal attention to the dependent and very unsatisfactory state of the Judiciary in this Country; and we further pray that our earnest wishes and solicitude expressed in this Address to Your Majesty, may in our behalf be laid before Your Majesty's faithful Commons in Imperial Parliament assembled.

In former Sessions of the Provincial Legislature, we pressed this painful and now alarming subject upon Your Royal consideration, representing the expediency of exempting the Chief Justice in this Province from the duties imposed upon him in the Executive Council, and of rendering the Judges independent of the Crown and of the people.

During the present Session, we have received from His Excellency the Lieutenant Governor, a Message, from which it appears, that on the subject of the Judges being commissioned to hold office during good behaviour, Your Majesty's Government find there are many difficulties to which, it is apprehended, this House may not have adverted, and that it is with a view solely to the welfare of the Province, and to the impartial Administration of Justice, that Your Majesty's Government hesitate to remove from the Judges in this Province their direct responsibility to the Crown.

Upon so important a subject, involving the interests, the rights, the liberties, and the very lives of the people of this Province, it becomes us with earnestness to repeat our humble remonstrances against the present state of things.

We regard with grateful recollection the memorable declaration of His late Most Gracious Majesty from the Throne, "that he looked upon the independence and uprightness of the "Judges as essential to the impartial administration of Justice, as one of the best securities of "the rights and liberties of his Subjects, and as most conducive to the honour of the Crown." In this respect we rejoice at the unparalleled happiness of the people of England; we cannot, however, but feel that as a portion of Your Majesty's free and glorious Empire, we also are equally interested and entitled to have justice administered amongst us by independent Judges, equally able to appreciate the value of so great a blessing, and disposed with constitutional jealousy to watch over the judicial character, to preserve it unsullied by unjust reproach, and unawed by the vindictive exercise of the Royal Prerogative by the Provincial Authorities.

In this Province, it is exceedingly desirable and even necessary that the Court of King's Bench should for many years to come be wholly composed of Judges selected from the English Bar; Judges who would in that case be as free as possible from the entanglements of family connexions, the influence of local jealousies, and the contamination of provincial politics: without such a change, Justice never can in this Country be administered with purity, or rise above suspicion.

We duly value the assurance of Your Majesty, conveyed in the Message of His Excellency, " that the direct responsibility of our Judges to the Crown is enforced by Your Majesty " only on the most serious occasions, and never in respect to any act which can be properly " considered judicial." But although Your Majesty is thus graciously pleased to declare, that Your Majesty in the exercise of Your Royal Prerogative will be governed by a maxim so consonant to British Justice, yet that assurance, while it is grounded upon the continual dependency of our Judges, can afford no sufficient and practical remedy against the abuse of Your Majesty's Royal Prerogative by the Provincial Administration. This abuse of Your Majesty's Royal Prerogative has been flagrantly manifested by the late violent, precipitate and unjustifiable removal of the Honorable Mr. Justice Willis from the Court of King's Bench in this Province.

The pretence for this almost irreparable wound to the Constitution appears to have been the declaration of an opinion by that learned and upright Judge, upon the constitution of the Provincial Court of King's Bench, which opinion was evidently expressed to explain and justify his submission to a conscientious conviction of the impropriety of knowingly proceeding in the administration of the law in a Court not organized as the law requires.

By the Provincial Act erecting that Court, it is wisely provided, " that a Chief Justice, " together with two Puisné Judges, shall preside therein." No explanation can add to the clearness of that provision, so obviously conducive to the safety and liberty of the subject; and it has become our urgent duty humbly to declare to Your Majesty, that our duty forbids us to yield to the attempts of the local Administration, to entail upon us the dangerous encroachments made in years of past misrule, by establishing such a construction of that law as would place the rights and liberties, the property and lives of the people of this Province, at the disposal of one, while a liberal salary is provided for three Judges.

The opinon of the learned Judge became officially known to the local Government some weeks before the commencement of the Term in which it was expressed.

Finding that no step was taken to organize the Court according to law, and avert the consequences inevitably following pertinacity in the error, Mr. Justice Willis honourably withdrew from a scene, by a continuance in which he must have compromised his judicial character. Under these circumstances, it appears that the Executive availed itself of the dependency of the Judiciary, and Mr. Justice Willis was unnecessarily and violently removed from his office, because, educated in no school of subservient principles, he would not yield to doubtful expediency and unlawful usage.

We are not insensible of the advantages of the provision against granting Offices in Your Majesty's Colonies in America to persons resident or intending to reside in Great Britain; a provision manifestly intended to apply particularly (perhaps exclusively) to offices which could be exercised by Deputy, and therefore farmed out to the best bidder; but it is with concern and dismay that the people of this Province have witnessed the perversion of law and power, for the dangerous purpose of removing a Judge, whose only offence we believe to be a scrupulous and conscientious discharge of his judicial duty.

The same power which authorized the removal of Mr. Justice Willis, supposing it to be lawful, and the appointment of Mr. Justice Hagerman in his place, might with greater facility have created a Chief Justice to organize the Court according to law. But we feel that the magnitude of the outrage itself against the justice of the Country is so great, as to forbid our descending to those particulars of which we can be only partially informed, from the policy of the local Administration in withholding from us that information which might more fully expose the enormity of the transaction. We humbly desire, however, to declare to Your Majesty, that had the law not placed it in the power of the local Government to avert the evils, the apprehension of which they affect to have influenced their conduct, we would esteem those evils very subordinate to this intimidation of our Judges, by the cruel aspersion of the character and unjust ruin of the prospects of one of their number, by the bold and daring exercise of arbitrary power.

Although the defective constitution of the Court, and the consequent illegality of its proceedings, have been known to the Provincial Government since Trinity Term last, yet the administration of Justice has not been relieved from this serious embarrassment, by the due orga-

nization of that Court, nor has His Excellency been advised to bring this all-important state of the Country under the notice, or to recommend it to the consideration of the Provincial Legislature. We therefore cannot too earnestly express to Your Majesty our deep sense of the injustice, inexpediency and illegality of persisting in the maintenance of the present defective state of the Court; and to represent to Your Majesty the sacred duty which we feel to be imposed upon us, firmly to protect the interest of those suitors who have been prejudiced, either because they abstained from a Court which was violating law, or because they were driven by their necessities to yield to this assumption of judicial power.

In Michaelmas Term last, Mr. Justice Hagerman alone constituted our Court of King's Bench, wherein he confirmed his own questioned judgment at the preceding Assizes, in a trial in which Mr. Justice Sherwood was interested; the result of which trial involved a property of very great value, acquired through those extraordiary judicial proceedings in the case of Mr. Randall, whose injustice has long been unavailingly an object of legislative relief and public sympathy. It is from such proceedings, such Courts, and such Judges, that the people desire to be relieved.

We had hoped that the appointment of Judges from England would redeem the character of the Provincial Judiciary; but that hope has been greatly impaired, by finding that such men have been esteemed by those in power too conscientious for Colonial rule. We feel that no gentleman of the English Bar, gifted with learning and character, will come to administer justice amongst us, if he is subject to an ignominious removal, and obliged to meet in England charges unknown to him, got up against him without regard to the laws of honor, or justice of the country.

We humbly express to Your Majesty our serious apprehension that the learned Judge who has thus far been a victim of Provincial persecution may be elevated to some higher place in Your Royal consideration, instead of being restored to his seat upon our Bench, as the most effectual method of wiping away the stain attempted to be affixed to his character, and of healing the wound inflicted upon the Justice and Constitution of the Country. His reinstatement in office as our Judge, is most desirable for the peace and happiness of the Province, and for the restoration of public confidence in the administration of the law.

In the name of equal justice, we further humbly pray Your Majesty to cause a strict inquiry to be made into the conduct of all persons directly and indirectly concerned in this overbearing and despotic proceeding; and, as the only means of assuring our future security, to expose them to whatever punishment may be due to their respective crimes, as advisers, abettors, and approvers of the same.

Should Your Majesty be advised to disregard these our just and earnest prayers against grievances which have increased under the patience with which we have hitherto endured them, we shall be constrained to feel, that while we form a part of the British Empire, we are excluded from sharing its equal and exalted justice.

We again humbly pray Your Majesty to lay the whole matter and prayer of this Address before the British House of Commons, and to communicate to them our earnest hope that they will be pleased most favorably to regard our wishes, and promote by their wisdom and counsel the redress of our wrongs.

Commons' House of Assembly,
14th March, 1829.

(Signed,) MARSHALL S. BIDWELL,
Speaker.

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